

York, on the 14 day of December 2011, at 2¹⁵ p.m., or as soon thereafter as counsel can be heard, why an Order should not issue enjoining TPR and the Trump Group Defendants, along with their agents, assigns, attorneys, and/or anyone acting on their behalf from proceeding with, or making any motion in or concerning, the action commenced in Delaware Chancery Court entitled *Dalia Genger as Trustee of the Orly Genger 1993 Trust v. TR Investors LLC et al* (the "Delaware Action") during any period of time when Dalia Genger, the plaintiff in the Delaware Action, is enjoined from prosecuting the Delaware Action by this Court; and it is hereby

pending the hearing of this motion

ORDERED that, ~~until further order of this Court~~, TPR and the Trump Group Defendants, along with thier agents, assigns, attorneys, and/or anyone acting on their behalf shall be prohibited from proceeding with, or making any motion in or concerning, the Delaware Action; and it is further

ORDERED, that a copy of this Order to Show Cause, together with copies of the papers upon which it was made, shall be served upon counsel for all parties who have appeared in this action by e-mail and electronic filing and that such service shall be deemed good and sufficient notice of this application. All opposition papers shall be e-filed on or before Nov. 21, 2011. All reply papers shall be e-filed on or before Dec. 9, 2011.

ORAL ARGUMENT

DIRECTED

JSF

JSF

ENTER:

JSF

J.S.C.

HON. PAUL G. FEINMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----x
ARIE GENDER and ORLY GENDER, in her
individual capacity and on behalf of
THE ORLY GENDER 1993 TRUST,

Plaintiffs,

Index No. 651089-10

-against-

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993
TRUST, ROCHELLE FANG, individually and as
trustee of THE SAGI GENDER 1993 TRUST,
GLENCOVA INVESTMENT COMPANY, TR INVESTORS,
LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II,
LLC, JULES TRUMP, EDDIE TRUMP AND MARK HIRSCH,

ORDER
Motion Sequence
Numbers 012 and 013

Defendants.
-----x

PAUL G. FEINMAN, J:

The instant motions, brought on by orders to show cause assigned motion sequence numbers 012 and 013, respectively, are filed by plaintiff Orly Genger, in her individual capacity and on behalf of the Orly Genger 1993 Trust, seek temporary restraining orders and preliminary injunctions against the defendants named in the above-captioned action, from proceeding with that certain action commenced in the Delaware Chancery Court entitled *Dalia Genger as Trustee of the Orly Genger 1993 Trust v. TR Investors LLC et al* (the Delaware Action), in which Dalia Genger sought a declaratory judgment with respect to the beneficial ownership of the Orly Trust shares. On October 26, 2011 and November 9, 2011, after hearing from counsel for the plaintiff and the defendants,

Sealed in New York EF on April 9, 2012
(*) (each seq no.)
88


this Court issued temporary restraining orders (the TROs) enjoining the defendants from proceeding with, or otherwise making any motion in or concerning, the Delaware Action until further order of this Court. The TROs were issued to maintain the status quo in this matter, pending a decision of the United States District Court for the Southern District of New York (the Federal Court), which is anticipated to, inter alia, determine the proper forum or jurisdiction for hearing and adjudicating the beneficial interest in the disputed shares (the Federal Court Decision). Inasmuch as the Federal Court Decision has not yet been issued, the instant motions are held in abeyance, pending the Federal Court's resolution of the jurisdictional issue.

Accordingly, it is

ORDERED that the temporary restraining orders dated October 26, 2011 and November 9, 2011 shall continue pending further order of this Court; and it is further

ORDERED that the parties are directed to notify the court when the Federal Court Decision has issued in order that this court may finally resolve the motions hereby held in abeyance.

Dated: April 9, 2012



J.S.C.

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(973) 618-9100
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January 16, 2013

BY E-FILING

Hon. Barbara Jaffe, J.S.C.
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Arie Genger et al. v. Sagi Genger et al., Index No. 651089/10

Dear Justice Jaffe:

This firm represents plaintiff Orly Genger, as an individual and on behalf of the Orly Genger 1993 Trust ("Orly"), in the above-referenced action. Pursuant to Uniform Court Rule 202.48, Orly submits the attached counter-proposed Judgment in response to defendant Dalia Genger's ("Dalia") proposed Judgment [Docket No. 287], along with a redline showing the limited changes Orly has made to Dalia's proposed Judgment. We respectfully request a conference with the Court to address Dalia and Orly's proposed Judgments.

Orly's proposed Judgment makes two changes to Dalia's proposed Judgment. *First*, Orly's proposed Judgment removes the phrase "all temporary restraining orders and preliminary injunctions are vacated as against" Dalia. The Court's Decision and Order, however, does not contemplate the release of any injunctions or restraints. Further, Dalia's proposed language could affect Justice Feinman's restraint of an action commenced by Dalia Genger -- supposedly *on behalf of the Orly Trust*, and not as an individual -- in Delaware Chancery Court (the "Delaware DJ Action"). See Docket No. 150 [signed TRO]. All parties to the Delaware DJ Action remain parties to this action, including the Orly Trust, and the injunction remains necessary and appropriate.

Second, Orly's proposed Judgment removes the phrase "and that Plaintiffs Arie Genger and Orly Genger take nothing against" Dalia. Such language is unclear and appears unnecessary.¹

Orly thanks the Court for its continued attention to this matter.

¹ Neither this letter nor Orly's counter-proposed Judgment should be construed as a waiver of Orly's right to appeal the Decision and Order.

ZEICHNER ELLMAN & KRAUSE LLP

Hon. Barbara Jaffe

January 16, 2013

Page 2

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Yoav M. Griver', written in a cursive style.

Yoav M. Griver

Attorney for plaintiff Orly Genger

YMG:asl

Enclosures

cc: All Counsel of Record (by e-file)

Present:
Hon. Barbara Jaffe, Justice

At a Trial Term, Part 12, of the
Supreme Court of the State of New
York, held in and for New York
County, at the Courthouse, 60
Centre Street, on January __, 2013

ARIE GENDER and ORLY GENDER, in her individual
capacity and on behalf of the ORLY GENDER 1993
Trust,

Plaintiffs,

v.

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993
TRUST, ROCHELLE FANG, Individually and as Trustee
of THE SAGI GENDER 1993 TRUST, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP, MARK HIRSCH, and
TRANS-RESOURCES, INC.

Defendants.

Index No. 651089/2010

PROPOSED JUDGMENT

Upon the Decision and Order entered December 19, 2012, and the Amended Decision and Order entered January 2, 2013, and the papers referenced therein, including the Summons and Supplemental Summons, the Third Amended and Supplemental Complaint (Dkt. 112), the October 14, 2011 Notice of Motion of Defendant Dalia Genger to Dismiss the Third Amended and Supplemental Complaint (Dkt. 129) and October 14, 2011 Affirmation of Robert A. Meister and Memorandum in Support thereof (Dkts. 129-1, 129-2, and 159), the Memorandum of Plaintiff Orly Genger in Opposition thereto (Dkt. 182), the Memorandum of Plaintiff Arie Genger in Opposition thereto (Dkt. 189), the November 22, 2011 Affirmation of Lauren J.

Wachtler in Opposition thereto (Dkt. 191) and the Reply Memorandum of Dalia Genger is Support (Dkt. 195), it is hereby

ORDERED, ADJUDGED AND DECREED that all claims against Defendant Dalia Genger are severed and dismissed with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that Defendant Dalia Genger, who resides at 200 East 65th Street, New York, New York 10065, shall have Judgment for costs and disbursements of \$200 pursuant to CPLR § 8101, and \$45 pursuant to CPLR § 8202 against Arie Genger, who resides at 2600 Island Boulevard, Penthouse One, Aventura, Florida 33160, and Orly Genger, who resides at 1965 Broadway, Apartment 22G, New York, New York 10024.

ENTER

Barbara Jaffe, Justice

Clerk of the Court

Present:
Hon. Barbara Jaffe, Justice

At a Trial Term, Part 12, of the
Supreme Court of the State of New
York, held in and for New York
County, at the Courthouse, 60
Centre Street, on January __, 2013

ARIE GINGER and ORLY GINGER, in her individual
capacity and on behalf of the ORLY GINGER 1993
Trust,

Plaintiffs,

v .

SAGI GINGER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GINGER, THE SAGI GINGER 1993
TRUST, ROCHELLE FANG, Individually and as Trustee
of THE SAGI GINGER 1993 TRUST, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP, MARK HIRSCH, and
TRANS-RESOURCES, INC.

Defendants.

Index No. 651089/2010

PROPOSED JUDGMENT

Upon the Decision and Order entered December 19, 2012, and the Amended Decision and Order entered January 2, 2013, and the papers referenced therein, including the Summons and Supplemental Summons, the Third Amended and Supplemental Complaint (Dkt. 112), the October 14, 2011 Notice of Motion of Defendant Dalia Genger to Dismiss the Third Amended and Supplemental Complaint (Dkt. 129) and October 14, 2011 Affirmation of Robert A. Meister and Memorandum in Support thereof (Dkts. 129-1, 129-2, and 159), the Memorandum of Plaintiff Orly Genger in Opposition thereto (Dkt. 182), the Memorandum of Plaintiff Arie Genger in Opposition thereto (Dkt. 189), the November 22, 2011 Affirmation of Lauren J.

Wachtler in Opposition thereto (Dkt. 191) and the Reply Memorandum of Dalia Genger is Support (Dkt. 195), it is hereby

ORDERED, ADJUDGED AND DECREED that all claims against Defendant Dalia Genger are severed and dismissed with prejudice and all temporary restraining orders and preliminary injunctions are vacated as against her, and that Plaintiffs Arie Genger and Orly Genger take nothing against Dalia Genger, and it is further

ORDERED, ADJUDGED AND DECREED that Defendant Dalia Genger, who resides at 200 East 65th Street, New York, New York 10065, shall have Judgment for costs and disbursements of \$ 200 pursuant to CPLR § 8101, and \$45 pursuant to CPLR § 8202 against Arie Genger, who resides at 2600 Island Boulevard, Penthouse One, Aventura, Florida 33160, and Orly Genger, who resides at 1965 Broadway, Apartment 22G, New York, New York 10024.

ENTER

Barbara Jaffe, Justice

Clerk of the Court

Document comparison done by Workshare DeltaView on Wednesday, January 16, 2013 12:26:04 PM

Input:	
Document 1	PowerDocs://NYSEK LIB/696776/1
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Moved to	0
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Format changed	0
Total changes	3

FILED UNDER SEAL

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: BARBARA JAFFE
J.S.C.
Justice

PART 12

Index Number : 651089/2010
GENGER, ARIE
vs.
GENGER, SAGI
SEQUENCE NUMBER : 017
VACATE STAY/ORDER/JUDGMENT

INDEX NO. 651089/10
MOTION DATE _____
MOTION SEQ. NO. 017

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

DEC 23 2018
Dated: DEC 23 2018

Barbara Jaffe J.S.C.
BARBARA JAFFE

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
ARIE GENDER and ORLY GENDER, in her individual
capacity and on behalf of
THE ORLY GENDER 1993 TRUST,

Index No. 651089/10

Mot. Seq. Nos. 017-020, 022, 025

Plaintiffs,

DECISION AND ORDER

-against-

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993
TRUST, ROCHELLE FANG, individually and as
trustee of THE SAGI GENDER 1993 TRUST,
GLENCLOVA INVESTMENT COMPANY, TR
INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW
TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP
AND MARK HIRSCH,

Defendants.

-----X
SAGI GENDER, individually and as assignee of THE
SAGI GENDER 1993 TRUST, and TPR INVESTMENT
ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants, and Third-
Party Claimants,

-against-

ARIE GENDER, ORLY GENDER, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP, MARK HIRSCH,
TRANS-RESOURCES, INC., and WILLIAM DOWD,

Cross-Claim, Counterclaim and/or Third-Party
Defendants.

-----X

-----X
GLENCLOVA INVESTMENT COMPANY,
TR INVESTORS, LLC, NEW TR EQUITY I, LLC,
NEW TR EQUITY II, LLC, JULES TRUMP,
EDDIE TRUMP, MARK HIRSCH, and
TRANS-RESOURCES, INC.,

Counterclaimants, Cross-Claimants, and Third-
Party Plaintiffs,

-against-

ARIE GENDER, ORLY GENDER, SAGI GENDER,
TPR INVESTMENT ASSOCIATES, INC., THE
SAGI GENDER 1993 TRUST, WILLIAM DOWD,
ARNOLD BROSER, DAVID BROSER, and ONE
OR MORE ENTITIES DIRECTED, OWNED OR
CONTROLLED BY ARNOLD BROSER AND/OR
DAVID BROSER,

Counterclaim, Cross-Claim, and/or Third-
Party Defendants.

-----X
BARBARA JAFFE, JSC:

This decision and order addresses motion sequence numbers 017, 018, 019, 020, 022 and 025 in the above-captioned action. In sequence number 017, the so-called Trump Group seeks an order vacating or modifying an order issued on November 9, 2011 by the justice previously presiding in this part temporarily restraining it and others from proceeding in a related action pending before the Delaware Court of Chancery (November 2011 TRO). In sequence numbers 018, 019, and 020, third-party defendants Arnold Broser and David Broser seek orders dismissing and/or severing the third-party actions commenced against them by the Trump Group. In sequence number 022, David Broser moves for an order quashing the Trump Group's subpoena *duces tecum*.

On or about June 16, 2013, plaintiffs and third-party defendants Arnold Broser and David Broser (collectively, AG Group), entered into a settlement agreement with the Trump Group that resolved the various claims and counterclaims among the parties and contains a confidentiality clause. On July 1, 2013, I so-ordered a second amended stipulation and order of discontinuance with prejudice by which the parties, among other things, agreed to the vacatur of the November 2011 TRO. Given the settlement agreement and stipulation, and based on counsels' representations, sequence numbers 017, 018, 019, 020, and 022 are moot and deemed withdrawn.

Thereafter, defendants TPR Investment Associates, Inc. (TPR) and Sagi Genger (collectively, TPR/Sagi) sought by order to show cause (sequence number 025) an order compelling the production or disclosure of the settlement agreement. Plaintiffs oppose; the Trump Group takes no position.

I. BACKGROUND

The instant motion (sequence number 025) is one of many addressed in prior opinions. Thus, familiarity with the essential facts is presumed. For present purposes the following background is provided.

On July 26, 2010, plaintiffs commenced this action seeking, among other things, a determination of their beneficial ownership interests in certain shares of Trans-Resources, Inc. (TRI), a TPR subsidiary, or the proceeds of the TRI shares, as well as damages arising from defendants' alleged fraudulent acts and breaches of fiduciary duties. In a decision dated January 2, 2013, I dismissed all of plaintiffs' claims but for those alleging a breach of fiduciary duty and unjust enrichment against, among others, TPR/Sagi. As mentioned above, AG Group, including

plaintiffs, settled with the Trump Group. A copy of the settlement agreement accompanied a request that I so-order the stipulation.

On July 8, 2013, after the Delaware Chancery Court rendered its decision awarding TPR proceeds from its sale of the TRI shares of which plaintiffs claimed beneficial interests, Arie sought to restrain TPR/Sagi from using or otherwise disposing of the sale proceeds (sequence number 024). In support, Arie stated that, pursuant to the settlement agreement, he relinquished his claims to the actual ownership of his TRI shares, but reserved his claims against TPR/Sagi to receive the proceeds of such shares, based on his surviving claims of breach of fiduciary duty and unjust enrichment. I declined to sign the OSC. Arie appealed to the Appellate Division, First Department.

II. DISCUSSION

A. Contentions

TPR/Sagi argues that Arie's attempt to obtain emergency relief to restrain or enjoin it from using the sale proceeds is substantially based on the settlement agreement, thereby opening the door to its disclosure. It relies on a heading in Arie's appellate brief ("Arie's Settlement With The Trump Group Defendants Does Not Affect His Unjust Enrichment Claims For the Turnover of The Arie Share Proceeds") and Arie's statement therein that "[a]s part of that settlement, Arie relinquished any future claim to the actual ownership of the Arie TRI Shares themselves, but clearly reserved . . . his . . . claims against TPR and Sagi in this action to receive the [shares] proceeds" (NYSCEF 531, at 3). TPR/Sagi also contends that plaintiffs have thereby placed the settlement agreement in issue, and that the settlement agreement is otherwise relevant because the Trump Group paid plaintiffs a sum certain in exchange for the release of claims

against it, and that plaintiffs “may well have been made whole by the terms of the Settlement, thereby negating any claims for damages against TPR and Sagi.” Thus, TPR/Sagi maintains that “at the least,” it is entitled to an offset pursuant to GOL § 15-108. (NYSCEF 531, at 5).

Arie opposes, contending that his claim to the share proceeds arises from his unjust enrichment and breach of fiduciary duty claims and not from the settlement agreement. (NYSCEF 538).

B. Analysis

Disclosure of the terms of a settlement agreement by a settling party to a nonsettling party “may be appropriate, despite the presence of a confidentiality clause in the agreement, where the terms of the agreement are ‘material and necessary’ to the nonsettling party’s case.” (*Mahoney v Turner Constr. Co.*, 61 AD3d 101, 103 [1st Dept 2009]). However, where the terms “have no bearing on the issues in the case, the terms are not discoverable by a nonsettling party.” (*Id.* at 105). Any uncertainty as to the relevance of the settlement terms may be resolved by an *in camera* review of the settlement agreement, and confidential terms may be protected by an order limiting disclosure. (*Id.*). And, although a party may open the door to an issue and thereby waive an objection to disclosure, the determination of whether a party has opened the door to an issue is discretionary, based on a consideration of “whether . . . the evidence or argument said to open the door is incomplete or misleading, and what if any otherwise inadmissible evidence is reasonably necessary to correct the misleading impression.” (*People v Massie*, 2 NY3d 179, 184 [2004]).

My approval of the stipulation was based primarily on the settlement agreement whereby the settling parties agreed to the mutual dismissal and release of claims and counterclaims, save for the aforementioned claims against TPR/Sagi. Although referencing the agreement wherein

Arie relinquished his claim to actual ownership of the TRI shares and reserved his claims against TPR/Sagi, the injunctive relief he sought was not based on the settlement agreement but on his claim to beneficial ownership of the shares, and TPR/Sagi identifies no incomplete or misleading statements about the agreement in Arie's appellate brief or other courts papers. That plaintiffs produced *in camera* a copy of the settlement agreement neither opens the door to its disclosure nor puts its terms in issue, as it was provided in conjunction with the stipulation, and does not constitute an impermissible *ex parte* communication.

In contrast to the circumstances set forth in *Osowski v AMEC Constr. Mgt., Inc.*, 69 AD3d 99 (1st Dept 2009), here, the settlement has no bearing on anything other than a possible offset at the end of the trial. TPR/Sagi's speculation that plaintiffs may have been made whole by the settlement does not warrant disclosure of the agreement and is, in any event, not supported by its terms. (*Id.* at 107, citing *Matter of New York County Data Entry Worker Prod. Liab. Litig.*, 162 Misc 2d 263 [Sup Ct, NY County 1994], *aff'd*, 222 AD2d 381 [1st Dept 1995] [although settlement terms would be useful in assessing maximum exposure under 15-108, "such strategizing has no bearing on the underlying issues of fault and damages"]; *King County, Washington v IKB Deutsche Industriebank AG*, 2012 WL 3553775, *2, 2012 US Dist LEXIS 116583, *9 (SD NY, Aug. 17, 2012, No. 09 CV 8387 [defendant may raise 15-108 defense without knowing settlement terms])). Here, other than trial strategy, TPR/Sagi fails to advance a sufficient reason supporting its request for pre-verdict disclosure of the settlement agreement.

Additionally, at oral argument of the motion, TPR/Sagi's counsel argued, for the first time, that because the settlement agreement affects plaintiffs' beneficial ownership of the TRI shares, disclosure is essential. (NYSCEF Doc. No. 547, at 15-16). Plaintiffs' opposition papers

to the instant motion and their papers seeking approval of the stipulation reflecting that plaintiffs agreed to release their claims against the Trump Group and acknowledged that the Trump Group owns all right and interest, both beneficial and outright, to the shares, in exchange for the payments under the settlement agreement, while retaining their claims against TPR/Sagi in this action, demonstrate that disclosure of the agreement is not essential to their defense, and my decision permitting the claims to proceed against TPR/Sagi is based on the allegations in plaintiffs' complaint as well as other pleadings filed by the relevant parties. Therefore, the settlement agreement, and Arie's release of his claim to beneficial ownership of the shares, is irrelevant to TPR/Sagi's defense in this action.

Accordingly, based on the foregoing, it is hereby

ORDERED, that, with respect to motion sequence numbers 017, 018, 019, 020 and 022, the relief sought is moot and the motions are deemed withdrawn; it is further

ORDERED, that with respect to motion sequence number 025, the relief sought is denied; and it is further

ORDERED, that the parties are directed to appear for a status conference before this court on January 22, 2014, at 2:15 a.m./p.m.

ENTER:

J.S.C.

Dated: December 18, 2013
New York, New York

BARBARA JAFFE
J.S.C.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 11, 2014.

Present - Hon. Peter Tom, Justice Presiding,
David Friedman
Rolando T. Acosta
Richard T. Andrias
Rosalyn H. Richter, Justices.

-----x

Arie Genger,
Plaintiff-Appellant-Respondent/
Plaintiff-Appellant,

-and-

Orly Genger, in her individual capacity
and on behalf of Orly Genger 1993
Trust,
Plaintiff-Appellant-Respondent,

-against-

M-541
Index No. 651089/10

Sagi Genger, et al.,
Defendants-Respondents-Appellants/
Defendants-Respondents,

Glencova Investment Company, et al.,
Defendants-Respondents-Appellants,

-and-

Rochelle Fang, etc., et al.,
Defendants.

-----x

Consolidated appeals and cross appeals having been taken to this Court from the amended order of the Supreme Court, New York County, entered on or about January 2, 2013 (mot. seq. nos. 006, 007, 009-011, 015), and from the order of said Court entered on or about July 11, 2013 (mot. seq. nos. 013-016), respectively, and said consolidated appeals and cross appeals having been perfected,

And defendants TPR Investment Associates, Inc. and Sagi Genger having moved, pursuant to CPLR 3124, to compel the production of the Settlement Agreement entered into between plaintiffs Arie Genger and Orly Genger and the defendants referred to as the "Trump Group", and for related relief,

(M-541)

-2-

March 11, 2014

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied. Sua sponte, the perfected consolidated appeals and cross appeals are adjourned to the May 2014 Term.

ENTER:


CLERK

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: BARBARA JAFFE
J.S.C.
Justice

PART 12

Index Number : 109749/2009
GENGER, ORLY
vs.
GENGER, DALIA
SEQUENCE NUMBER : 034
COMPEL DISCLOSURE

INDEX NO. 109749/00
MOTION DATE _____
MOTION SEQ. NO. 034

The following papers, numbered 1 to _____, were read on this motion to/for Compel

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

No(s). _____

Answering Affidavits — Exhibits _____

No(s). _____

Replying Affidavits _____

No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 7/3/14

BARBARA JAFFE
J.S.C.
NON-FINAL DISPOSITION

1. CHECK ONE: ☐ CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
ORLY GENDER, in her individual capacity and on
behalf of the Orly Genger 1993 Trust (both in its
individual capacity and on behalf of D & K Limited
Partnership),

Index No. 109749/2009

Motion seq. nos. 034, 035

Plaintiff,

DECISION AND ORDER

-against-

DALIA GENDER, SAGI GENDER, LEAH FANG,
D & K GP LLC, and TPR INVESTMENT
ASSOCIATES, INC.,

Defendants.

-----X
BARBARA JAFFE, JSC:

For plaintiff:

Yoav M. Griver, Esq.
Brian Leinbach, Esq.
Zeichner, Ellman & Krause, LLP
1211 Avenue of the Americas
New York, NY 10036
212-223-0400

For TPR/Sagi:

John Dellaportas, Esq.
Nicholas Schretzman, Esq.
Morgan, Lewis & Bockius LLP
101 Park Ave.
New York, NY 10178
212-309-6000

William Wachtel, Esq.
Wachtel, Missry LLP
885 Second Ave.
New York, NY 10017
212-909-9595

In motion sequence number 034, defendants TPR Investment Associates, Inc. (TPR) and Sagi Genger (collectively, TPR/Sagi) seek an order compelling plaintiff Orly Genger and nonparties Arie Genger and Mark Hirsch to attend additional depositions and answer questions about the settlement agreement entered into by Orly, Arie and the so-called Trump Group in or about June 2013. (NYSCEF 539). In motion sequence number 035, Arie seeks a protective order preventing further deposition of him by TPR/Sagi. (NYSCEF 550). These motions are consolidated for disposition.

I. BACKGROUND

The background pertinent to these motions is set forth in several opinions of this court and others, including my decision dated December 23, 2013, rendered in the related action, *Genger v Genger*, Index No. 651089/2010. (NYSCEF 700). In that decision, I denied TPR/Sagi's motion for an order compelling Arie and Orly to disclose the terms of the June 2013 settlement. TPR/Sagi filed this motion seeking essentially the same relief, and before I issued the December decision. And, in another decision in that action, dated March 20, 2014, I denied TPR/Sagi's motion for an order enjoining Orly from implementing or accepting the benefits of the settlement, thereby rejecting their contention that Orly should be restrained from enjoying or using the proceeds for her own benefit as the proceeds belong to the Orly Trust. (NYSCEF 925).

In light of the foregoing, and given the protracted history of these litigations, familiarity with the factual background, rulings, and rationales set forth in the December and March decisions is presumed.

II. DISCUSSION

TPR/Sagi allege that as the Orly Trust receives no consideration for releasing its claims against the Trump Group, the party that funded the settlement, and that Orly has pocketed the proceeds for her own benefit, there is "a clear conflict of interest between Orly and the Orly Trust, which would militate for dismissal of Orly's derivative claims against Sagi and TPR on the grounds that she is no longer an adequate representative." They thus argue that the settlement agreement is relevant to their defenses in this action, as opposed to the 2010 action addressed in my December 2013 decision, and that Orly, as a derivative plaintiff, has no standing to bring claims on behalf of the Orly Trust given the conflict of interest and her inadequate representation

of the Trust's interests. (NYSCEF 547).

Having settled claims against the Trump Group in her individual capacity and as beneficiary of the Orly Trust, and absent anything prohibiting the Orly Trust from prosecuting claims against the Trump Group, there is no conflict between Orly and the Trust. And, it is undisputed that TPR/Sagi sought to obtain proceeds of the sale of the Orly Trust shares to the Trump Group, which proceeds are also claimed by the Orly Trust. Moreover, in a recent opinion issued by the Southern District of New York in *TPR Inv. Assoc., Inc. v Pedowitz & Meister LLP*, 2014 WL 1979932, *6 (SD NY, May 15, 2014), although TPR was found to be entitled to the proceeds, the court also observed that nothing therein "should be construed as resolving any question other than whether TPR is the next (but not necessarily last) beneficiary of the sale of the Orly Trust Shares." Consequently, given TPR/Sagi's struggle with the Trust over the proceeds, their bona fides in expressing concern for the Trust is questionable at best.

Additionally, Dalia, trustee of the Orly Trust, has often sided with her son Sagi in these actions, and if Orly is deemed to be an inadequate representative of the Orly Trust, and Dalia declines to pursue the Orly Trust claims against TPR/Sagi, TPR/Sagi could be insulated from the prosecution of such claims. However, after TPR/Sagi filed this motion, the Appellate Division, First Department, held that Dalia had a conflict of interest in releasing herself, as part of settlement agreements entered into in 2011 and 2012 between TPR/Sagi and herself, as trustee. It also adjudged the settlements, which were against Orly's interests, as void and/or voidable. (*Genger v Genger*, 115 AD3d 421, 423 [1st Dept 2014]). Thus, Dalia may no longer be able to serve as trustee, having failed to disclose the conflict to her principal, Orly. And, as noted by the First Department, Orly had petitioned the Surrogate's Court to remove Dalia as trustee and to

surcharge her. (*Id.*).

To the extent that there exist any issues as to which claims filed by Orly against the Trump Group belong to Orly individually or are derivative claims of the Orly Trust, and whether the derivative claims were released pursuant to the settlement agreement, as I observed in my March 2014 decision, those are matters for the parties to the settlement agreement.

This action does not involve the Trump Group, the party that is released under the settlement agreement. Rather, this action concerns Orly's allegation of "a sham UCC sale" orchestrated by Dalia and Sagi in 2009 with respect to the so-called 1993 Note that was never intended to be collected or enforced. Thus, TPR/Sagi have not demonstrated that the settlement agreement is relevant to their defenses. (NYSCEF 549 at 1). And it is undisputed that the settlement agreement settles no claims asserted by Orly in this action. Thus, there is no need to depose Orly about the settlement agreement.

As it is also undisputed that neither Arie nor Hirsch, an officer of the Trump Group, are parties to this action, there is no basis for deposing them about the settlement agreement.

TPR/Sagi also rely on a recent pleading filed by the Trump Group in the 2010 action (NYSCEF 888) whereby it raises a defense pursuant to General Obligations Law § 15-108 (b) to the cross claim for contribution asserted against it by TPR/Sagi. They argue that the pleading reflects the divergent positions taken by Orly and the Trump Group as to whether the settlement agreement settled derivative claims and, thus, according to TPR/Sagi, "one of these parties is lying to the Court." (NYSCEF 638 at 2). Per my holding in the December decision, the settlement agreement "has no bearing on anything other than a possible offset at the end of the trial," and that even though the settlement terms may be useful in assessing maximum exposure

under §15-108, “such strategizing [to obtain the settlement terms] has no bearing on the underlying issues of fault and damages.” (NYSCEF 700 at 1). I thus found that “other than trial strategy, TPR/Sagi fail[ed] to advance a sufficient reason supporting its request for pre-verdict disclosure of the settlement agreement.” (*Id.*). The same holds true here.

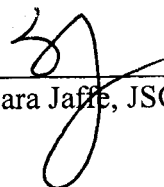
III. CONCLUSION

Accordingly, it is hereby

ORDERED, that the relief requested in motion sequence number 034 by TPR Investment Associates, Inc. and Sagi Genger (TPR/Sagi) seeking to compel additional depositions of the named deponents is denied; and it is further

ORDERED, that the relief requested in motion sequence number 035 by nonparty Arie Genger for a protective order to prevent further depositions of him by TPR/Sagi is denied as moot.

ENTER:


Barbara Jaffe, JSC

Dated: July 3, 2014
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE
J.S.C.
Justice

PART 12

Index Number : 651089/2010
GENGER, ARIE
vs.
GENGER, SAGI
SEQUENCE NUMBER : 031
REARGUMENT/RECONSIDERATION

INDEX NO. 651089/10
MOTION DATE _____
MOTION SEQ. NO. 031

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is for leave to reargue
is denied. See Genger v Genger, my Slip Op
66895(u).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/16/14

BZ
BARBARA JAFFE
J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: BARBARA JAFFE
J.S.C.
Justice

PART 12

Index Number : 651089/2010
GENGER, ARIE
vs.
GENGER, SAGI
SEQUENCE NUMBER : 023
OTHER RELIEFS

INDEX NO. 651089/10
MOTION DATE _____
MOTION SEQ. NO. 023

The following papers, numbered 1 to _____, were read on this motion to/for other reliefs
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____
Answering Affidavits — Exhibits _____ **No(s).** _____
Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: MAR 21 2014

[Signature] **J.S.C.**

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 12

-----X
ARIE GINGER and ORLY GINGER, in her individual
capacity and on behalf of THE ORLY GINGER 1993 TRUST,

Index No. 651089/10

Plaintiffs,

Motion Seq. No. 023

-against-

SAGI GINGER, TPR INVESTMENT ASSOCIATES, INC.,
DALIA GINGER, THE SAGI GINGER 1993 TRUST,
ROCHELLE FANG, individually and as trustee of
THE SAGI GINGER 1993 TRUST, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP AND MARK HIRSCH,

DECISION AND ORDER

Defendants.

-----X
SAGI GINGER, individually and as assignee of
THE SAGI GINGER 1993 TRUST, and TPR INVESTMENT
ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants,
and Third-Party Claimants,

-against-

ARIE GINGER, ORLY GINGER, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR
EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP,
EDDIE TRUMP, MARK HIRSCH, TRANS-RESOURCES, INC.,
and WILLIAM DOWD,

Cross-Claim, Counterclaim and/or
Third-Party Claim Defendants.

-----X
BARBARA JAFFE, JSC:

Sagi Genger (Sagi), The Sagi Genger 1993 Trust (Sagi Trust) and TPR Investment
Associates, Inc. (TPR) ask that I 1) decline to “so-order” a stipulation of settlement, unless and
until the settlement and all settlement-related documents have been produced to all interested

parties; and 2) enjoin and restrain plaintiff Orly Genger from implementing, accepting consideration from, or in any way enjoying the benefits of the settlement, unless and until movants' arguments about the settlement have been heard. Orly opposes the motion.

I. BACKGROUND

The parties to the settlement referenced in the stipulation are, primarily, Arie Genger, Orly Genger and the Trump Group, composed of Glenclova Investment Company, TR Investors, LLC, New TR Equity I, LLC, New TR Equity II, LLC, Jules Trump, Eddie Trump, and Mark Hirsch. Movants ask that I not so-order the stipulation because 1) Orly settled derivative claims belonging to the Orly Trust; and 2) the Sagi Trust, the remainderman beneficiary of the Orly Trust, will be harmed if Orly is not enjoined from taking the settlement proceeds for herself, as such proceeds belong to the Orly Trust, not to Orly personally.

After being provided with a copy of the settlement agreement for *in camera* review, a conference call was held with me on June 27, 2013 and all the parties in interest, including counsel. (NYSCEF 487). As a result of the conference call, a statement was inserted into the stipulation reflecting that Orly had settled her claims against the Trump Group "in her individual capacity and as beneficiary of" the Orly Trust. The statement was initialed by counsel for Orly, Arie, and the Trump Group. Because the stipulation was so-ordered, the request that I decline to do so is moot, as is the request for the production or disclosure of the settlement agreement and related documents, which I denied by order dated December 18, 2013, rendered in a closely related, if not substantially identical, matter. (NYSCEF 700).

The remaining issues raised in this motion are whether Orly settled derivative claims of the Orly Trust, and if so, whether she should be enjoined from taking and using proceeds of the

settlement for her sole benefit. Movants allege that, although the stipulation specifies that Orly settled claims against the Trump Group in her individual capacity and as beneficiary of the Orly Trust, she actually settled derivative claims belonging to the Orly Trust. Thus, they argue that the settlement proceeds belong to the Orly Trust. They rely in large part on a letter to me dated June 28, 2013 in which counsel for the Trump Group states, in relevant part, that “[c]ertain of Orly Genger’s claims against the Trump Group in this action have been held by Justice Feinman to be derivative in nature,” and that “[e]xcluding such claim from the claims that are to be dismissed is not what the Trump Group bargained and paid for in the settlement” (NYSCEF 485). At oral argument, counsel for the Trump Group explained that the stipulation submitted to me for approval indicated that “Orly was signing in whatever capacities she has,” and that the so-ordered stipulation “supersedes” the arguments advanced in the June 28 letter. (NYSCEF 651 at 6, 8). In essence, the parties to the settlement agreement concur that the only claims released by Orly against the Trump Group were those “that Orly made on her own behalf and as a beneficiary of the [Orly Trust]” (NYSCEF 651 at 11), and that the Trump Group agreed to the language inserted in the so-ordered stipulation (NYSCEF 651 at 12 [“Your Honor, my colleague, Mr. Allingham, signed the interlineated order as you entered it. We agree to whatever that order is.”])).

Dalia Genger, trustee of the Orly Trust, neither filed nor joined in the instant motion. Instead, she signed an affidavit, dated June 28, 2013, asserting that “an analysis of the claims [filed by Orly against the Trump Group] shows that they are entirely claims of the Orly Trust and that she has no individual rights separate therefrom.” (NYSCEF 483, ¶ 2). Dalia’s assertion is not supported or accompanied by any analysis of the subject claims, and is fatally conclusory.

Similarly, movants only “suspected” that “derivative Orly Trust claims” were settled in the settlement agreement, and now allege that their suspicion is bolstered by the June 28 letter. (NYSCEF 577, ¶ 6). And, having found that “Dalia - as trustee of Orly’s Trust - had a conflict of interest in releasing herself as part of the October 2011 and March 2012 settlement agreements [embodying the proposed transactions]” (*Genger v Genger*, -- AD3d --, 2014 NY Slip Op 01421 *2 (1st Dept 2014), the Appellate Division throws doubt on Dalia’s standing to complain.

In the settlement agreement, Orly stops short of releasing derivative claims. Rather, in paragraph 8 of the agreement, she only agrees to “cooperate” and “cause” the Orly Trust to release any and all claims against the Trump Group. At any rate, and to the extent that there remain issues of fact and law as to which claims filed by Orly against the Trump Group belong to Orly individually and/or are derivative claims belonging to the Orly Trust, I invite the parties to the settlement agreement to set forth the claims given up by Orly in her individual and beneficial capacities, and to explain why any derivative claims advanced in the complaint are not released by the agreement. Unless and until the issue of derivative claims is resolved, I cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust, particularly when the Sagi Trust has asserted a contingent remainderman interest in the Orly Trust.

Orly’s counsel also challenges the legal standing of the Sagi Trust in making this motion, as it is undisputed that TPR has no interest in the Orly Trust. At oral argument, counsel contended that given Orly’s youth and good health, the Sagi Trust’s interest “is only contingent, and if [Orly] does have issue, it is destroyed forever,” and thus such interest “is speculative at best.” (NYSCEF 651 at 13; NYSCEF 548 at 3). Counsel also noted that even though a

contingent remainderman has “limited standing,” movants cite no authority “allow[ing] them to hijack [sic] a settlement based upon contingent remainderman status.” (NYSCEF 651, at 14). As movants seek injunctive relief against Orly, they must establish their standing to pursue such relief, which they have failed to do. Hence, the requested relief is denied without prejudice.

Although I have reviewed the settlement agreement and so-ordered the related stipulation, in accordance with *Mahoney v Turner Constr. Co.* (61 AD3d 101 [1st Dept 2009]), signing the stipulation only resolves the parties’ dispute regarding whether the terms and related documents should be produced or disclosed.

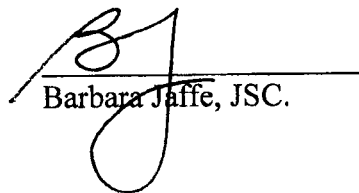
Accordingly, based on the foregoing, it is hereby

ORDERED, that the branch of the instant motion seeking an order declining to “so-order” that certain “Second Amended Stipulation of Discontinuance with Prejudice,” dated as of June 20, 2013 (the Stipulation), is denied as moot; it is further

ORDERED, that the branch of the instant motion seeking, in effect, an order requiring the disclosure or production of that certain settlement agreement referenced in the Stipulation is denied as moot; and it is further

ORDERED, that the branch of the instant motion seeking to enjoin or restrain plaintiff from implementing, accepting consideration from, or in any way enjoying the benefits of the settlement agreement is denied without prejudice.

ENTER:


Barbara Jaffe, JSC.

Dated: March 20, 2014
New York, NY

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ARIE GENDER and ORLY GENDER, in her individual
capacity and on behalf of the ORLY GENDER 1993
TRUST,

Plaintiffs,

- against -

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993
TRUST, ROCHELLE FANG, individually and as Trustee
of the SAGI GENDER 1993 TRUST, GLENCLOVA
INVESTMENT CO., TR INVESTORS, LLC, NEW TR
EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES
TRUMP, EDDIE TRUMP, MARK HIRSCH, and
TRANS-RESOURCES, INC.,

Defendants.

SAGI GENDER, individually and as assignee of THE
SAGI GENDER 1993 TRUST, and TPR INVESTMENT
ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants, and Third-
Party Claimants,

- against -

ARIE GENDER, ORLY GENDER, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP, MARK HIRSCH,
TRANS-RESOURCES, INC., and WILLIAM DOWD,

Cross-Claim, Counterclaim and/or Third-Party
Defendants.

INDEX NO. 651089/2010

SECOND

**AMENDED STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

Hon. Barbara Jaffe

Part 12

GLENCLOVA INVESTMENT CO., TR INVESTORS,
LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II,
LLC, JULES TRUMP, EDDIE TRUMP, MARK
HIRSCH, and TRANS-RESOURCES, INC.,

Counterclaimants, Cross-Claimants, and Third-
Party Plaintiffs,

- against -

ARIE GINGER, ORLY GINGER, SAGI GINGER,
TPR INVESTMENT ASSOCIATES, INC., THE SAGI
GINGER 1993 TRUST, WILLIAM DOWD, ARNOLD
BROSER, DAVID BROSER, and ONE OR MORE
ENTITIES DIRECTED, OWNED OR CONTROLLED
BY ARNOLD BROSER AND/OR DAVID BROSER,

Counterclaim, Cross-Claim, and/or Third-Party
Defendants.

WHEREAS no party hereto is an infant or an incompetent as to whom a committee has been
appointed;

WHEREAS the parties hereto have entered into a confidential agreement finally resolving the
disputes between them as it relates to the subject matter of this action;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for
Plaintiffs/Counterclaim Defendants Arie Genger and Orly Genger ("Orly"), in her individual capacity
(as beneficiary of)
and ~~on behalf of~~ the Orly Genger 1993 Trust, and Third-Party Defendants Arnold Broser, David Broser
and One or More Entities Directed, Owned or Controlled by Arnold Broser and/or David Broser
(collectively, the "AG Group"), and Defendants/Counterclaimants/Third-Party Plaintiffs Glenclova
Investment Co., TR Investors, LLC, New TR Equity I, LLC, New TR Equity II, LLC, Jules Trump,
Eddie Trump, Mark Hirsch, and Trans-Resources, Inc. (collectively, the "Trump Group"), that:

1. All claims, counterclaims and third-party claims of the AG Group in this action against the Trump Group are discontinued with prejudice and without costs;
2. All claims, counterclaims and third-party claims of the Trump Group in this action against the AG Group are discontinued with prejudice and without costs;
3. Any and all orders, including, without limitation, the Order to Show Cause dated August 8, 2011 (Mot. Seq. 5), the Order to Show Cause for Temporary Restraining Order and Preliminary Injunction dated August 11, 2011 (Mot. Seq. 4), the Order to Show Cause and Temporary Restraining Order dated November 9, 2011 (Mot. Seq. 13) (the "November 9, 2011 OSC") and the Decision and Order dated December 28, 2011 entered in this action which restrain, enjoin or in any way limit actions by any members of the Trump Group shall be, and are hereby, vacated and dissolved. Except as specifically provided in paragraph 4 of this Stipulation, nothing in this Stipulation is intended to vacate or dissolve any order entered in this action restraining, enjoining or in any way limiting acts by Sagi Genger, TPR Investment Associates, Inc., Dalia Genger, individually and/or as Trustee of the Orly Genger 1993 Trust, William Dowd, the Sagi Genger 1993 Trust, or Rochelle Fang, individually and/or as Trustee of the Sagi Genger 1993 Trust.
4. Orly's applications that resulted in the Order to Show Cause and Temporary Restraining Order entered October 26, 2011 (the "October 26, 2011 OSC") (Mot. Seq. 012) and the November 9, 2011 OSC are hereby withdrawn. The parties hereto stipulate and agree that any and all orders, restraints, injunctions or other limiting actions in the October 26, 2011 OSC and the November 9, 2011, which restrain, enjoin or in any way limit actions by any party, individual or entity from proceeding in the matter entitled *Dalia Genger, as Trustee of the Orly Genger 1993 Trust v. TR Investors LLC et al.*, C.A. No. 6906-CS (Del. Ch) shall be, and are hereby, vacated and dissolved.

5. Nothing in this Stipulation is intended to dismiss, discontinue or release any claim asserted in this action as against Sagi Genger, TPR Investment Associates, Inc., Dalia Genger, individually and/or as Trustee of the Orly Genger 1993 Trust, William Dowd, the Sagi Genger 1993 Trust, or Rochelle Fang, individually and/or as Trustee of the Sagi Genger 1993 Trust.

[INTENTIONALLY BLANK]

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed by facsimile and in counterparts that together shall constitute one and the same Stipulation.

DATED: New York, New York
June 21, 2013

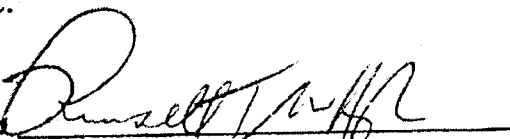
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LLC, Jules Trump, Eddie Trump, Mark
Hirsch And Trans-Resources, Inc.
(Collectively, The "Trump Group")*

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed by facsimile and in counterparts that together shall constitute one and the same Stipulation.

DATED: New York, New York
June 20, 2013

MITCHELL SILBERBERG & KNUPP LLP

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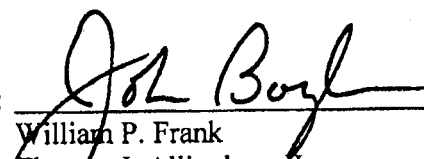
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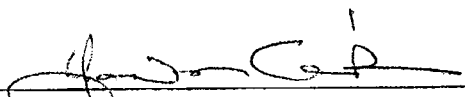
*Attorneys for Third-Party Defendant
Arnold Broser*

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New TR Equity I, LLC, New TR Equity II,
LLC, Jules Trump, Eddie Trump, Mark
Hirsch And Trans-Resources, Inc.
(Collectively, The "Trump Group")*

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✓ *Attorneys for Plaintiff Orly Genger, in her
individual capacity and ~~on behalf of~~ the Orly
Genger 1993 Trust*

*Attorneys for Third Party Defendant
David Broser*

as beneficiary of 

So-Ordered: _____

Hon. Barbara Jaffe

ZEICHNER, ELLMAN & KRAUSE LLP

By: _____

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*Attorneys for Plaintiff Orly Genger, in her
individual capacity and on behalf of the Orly
Genger 1993 Trust*

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*Attorneys for Third Party Defendant
David Broser*

So-Ordered: _____

Hon. Barbara Jaffe

BARBARA JAFFE
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK

Index No. 109749/09

ORLY GENDER in her :
individual capacity :
and on behalf of the :
Orly Genger 1993 :
Trust (both in its :
individual capacity :
and on behalf of D&K :
Limited Partnership), :

CERTIFIED COPY

Plaintiff, :

-against- :

DEPOSITION OF:

ECF Case DALIA :

GENGER, SAGI GENDER, :

ORLY GENDER

LEAH FANG, D&K GP :

LLC, and TPR :

INVESTMENT :

ASSOCIATES, INC., :

Defendants. :

- - - - -

VIDEOTAPED DEPOSITION OF ORLY GENDER

TRANSCRIPT of the stenographic notes

of the proceedings in the above-entitled

matter, as taken by and before

CAROLYN CHEVANCE, a Shorthand Reporter, and

Notary Public of the State of New Jersey, held

at the office of Morgan, Lewis & Bockius LLP, 101

Park Avenue, New York, New York, on October

25, 2013, commencing at 10:15 a.m.

Reporter: Carolyn Chevance

Job 66709

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A P P E A R A N C E S:

ZEICHNER ELLMAN & KRAUSE

BY: YOAV GRIVER, ESQ.

575 Lexington Avenue

New York, New York 10022

Attorneys for Plaintiff

MORGAN, LEWIS & BOCKIUS

BY: NICHOLAS SCHRETZMAN, ESQ.

101 Park Avenue

New York, New York 10178

Attorneys for Defendant

Also present:

Dale Swindell, Videographer

1 ORLY GENDER

2 attempted sale of TRI shares and the loss of her
3 trust control premium but she has not yet done
4 so", you then brought a -- you then brought that
5 lawsuit, correct?

6 A Yes.

7 Q And you brought that lawsuit as you
8 did this one, both individually and on behalf of
9 your trust; is that correct?

10 A Just to be certain, if you want to
11 give me a copy of my Complaint if you're going to
12 ask me questions about that lawsuit.

13 Q I'm not going to ask you many
14 questions about it, I promise. Just whether you
15 brought those claims, if you can remember,
16 whether you brought them both as you did in this
17 action, whether you brought them individually and
18 on behalf of the Orly trust alleging injury to
19 you and injury to the trust?

20 A Yes.

21 Q You did. You brought that claim
22 against the parties in this action, as Sagi and
23 TPR as well as the Trump Group?

24 A Yes.

25 Q And you since settled your claims

1 ORLY GENDER

2 against the Trump Group; is that correct?

3 A I settled with the Trump Group.

4 Q And you settled your claims that
5 you brought on your own behalf and on behalf of
6 the trust, correct?

7 MR. GRIVER: Objection,
8 mischaracterizes. Objection, foundation.
9 Objection, mischaracterizes facts.

10 A I settled on behalf of myself as an
11 individual.

12 Q You did not settle the claims that
13 were brought on behalf of the trust?

14 A Well, if there -- if the trustee of
15 my trust decides to file a complaint with the
16 Trumps regarding this matter they can.

17 Q Sorry, the Complaint has already
18 been filed alleging these injuries to the trust,
19 right?

20 A Correct.

21 Q Your testimony today is that when
22 you settled your claims against the Trumps you
23 did not settle those claims on behalf of the
24 trust, is that right?

25 MR. GRIVER: Can I have that back?

1 ORLY GENDER

2 (The record was read.)

3 MR. GRIVER: Objection, asked and
4 answered.

5 A I settled with the Trumps on my
6 behalf as an individual. Not -- I am not the
7 trustee of my trust. So I couldn't settle with
8 them as a trustee of my trust.

9 If the trustee decides to pursue
10 this matter with the Trumps they can.

11 Q So no consideration was paid to the
12 trust, is that correct?

13 MR. GRIVER: Can I have the
14 question back?

15 (The record was read.)

16 Q In connection with the settlement?

17 MR. GRIVER: I'm going to object
18 because you are seeking a legal conclusion
19 from a lay witness.

20 Q I will actually rephrase that.

21 No money was paid to the Orly trust
22 in exchange for the dismissal of the settlement
23 of claims, is that correct?

24 MR. GRIVER: Let's go off the
25 record. I'm going to say that the reason

In The Matter Of:

ARIE GINGER and ORLY GINGER

v.

SAGI GINGER

ORLY GINGER - Vol. 1

February 14, 2014

MERRILL CORPORATION

LegalLink, Inc.

225 Varick Street
10th Floor
New York, NY 10017
Phone: 212.557.7400
Fax: 212.692.9171

ORLY GENDER - 2/14/2014

Page 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

ARIE GENDER and ORLY GENDER, in her
individual capacity and on behalf of
the ORLY GENDER 1993 Trust,

Plaintiffs,

-against- Index No. 651089/2010

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER
1993 TRUST, ROCHELLE FANG, Individually
and as Trustee of THE SAGI GENDER 1993
TRUST, GLENCLOVA INVESTMENT COMPANY, TR
INVESTORS, LLC, NEW TR EQUITY I, LLC,
NEW TR EQUITY II, LLC, JULES TRUMP,
EDDIE TRUMP, MARK HIRSCH, and
TRANS-RESOURCES, INC.,

Defendants.

-----x

February 14, 2014

10:17 a.m.

Videotaped Deposition of ORLY GENDER,
taken by Defendants, pursuant to Notice, at
the offices of Morgan Lewis & Bockius LLP,
101 Park Avenue, New York, New York, before
ERIC J. FINZ, a Shorthand Reporter and
Notary Public within and for the State of
New York.

ORLY GENDER - 2/14/2014

Page 2

1
2 A P P E A R A N C E S:
3 ZEICHNER ELLMAN & KRAUSE LLP
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4 1211 Avenue of the Americas
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5
6 BY: YOAV M. GRIVER, ESQ.
(ygriver@zeklaw.com)
7 -AND-

8 WACHTEL MISSRY
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9 New York, New York 10017
10 BY: WALTER P. STASIUK, ESQ.
(wstasiuk@wmlp.com)

11
12
13 MITCHELL SILBERBERG & KNUPP LLP
Attorneys for Plaintiff Arie Genger
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14 New York, New York 10017
15 BY: LAUREN J. WACHTLER, ESQ.
(ljw@msk.com)

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17
18 MORGAN LEWIS & BOCKIUS LLP
Attorneys for Defendants Sagi Genger and TPR
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20
21 BY: NICHOLAS SCHRETZMAN, ESQ.
(nschretzman@morganlewis.com)
-and-
22 JESSICA JOY, ESQ.
(jjoy@morganlewis.com)

23
24
25

10:18:32

10:17:51

ORLY GENDER - 2/14/2014

Page 3

1

2 A P P E A R A N C E S: (Continued)

10:18:02

3 SKADDEN ARPS SLATE MEAGHER & FLOM LLP

10:18:05

Attorneys for Defendants Glenclova

4 Investment Company, TR Investors LLC, New TR

10:18:13

Equity I LLC, New TR Equity II LLC,

5 Trans-Resources, Mark Hirsch, Jules Trump

and Eddie Trump

6 One Rodney Square

P.O. Box 636

7 Wilmington, Delaware 19899

8 BY: DOUGLAS D. HERRMANN, ESQ.

(douglas.herrmann@skadden.com)

9

10

10:18:19

GOLDBERG SEGALLA LLP

11 Attorneys for William Dowd

11 Martine Avenue

12 White Plains, New York 10606

13 BY: BRIAN T. STAPLETON, ESQ.

(bstapleton@goldbergsegalla.com)

14

15

16

ALSO PRESENT:

17

SAGI GENDER

18

WILLIAM PACE, Videographer

19

20

21

22

23

24

25

ORLY GENDER - 2/14/2014

Page 70

1	ORLY GENDER	12:10:49
2	yes.	12:10:51
3	Q. And you filed this complaint on	12:10:56
4	your behalf individually and on behalf of	12:10:58
5	your trust. Is that correct?	12:10:59
6	A. Yes.	12:11:00
7	Q. And have you since settled your	12:11:07
8	claims against The Trump Group that you	12:11:09
9	brought in this action?	12:11:13
10	MR. HERRMANN: Object to the	12:11:14
11	form of the question.	12:11:16
12	A. I settled with the Trumps other	12:11:24
13	than with regards to my trust. So I settled	12:11:29
14	with them as an individual.	12:11:31
15	Q. So are you still suing them on	12:11:33
16	behalf of the trust?	12:11:36
17	A. No. I'm not currently suing	12:11:43
18	them on behalf of the trust.	12:11:51
19	Q. So you aren't suing them in your	12:12:00
20	individual capacity or on behalf of the	12:12:02
21	trust; correct?	12:12:04
22	MR. GRIVER: Can I have that	12:12:06
23	question read back, please.	12:12:12
24	(Record read as requested.)	12:12:14
25	A. Correct.	

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YOAV M. GRIVER
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ygriver@zeklaw.com

August 17, 2015

BY E-MAIL

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Skadden, Arps, Slate,
Meagher & Flom LLP
Four Times Square
New York, NY 10036
John.Boyle@skadden.com

Arie Genger et al. v. Sagi Genger et al., Index No. 651089/10

Dear John:

As you know, this firm represents Orly Genger. On Friday, August 14, 2015, you filed an Affirmation with the Appellate Division, First Department, in connection with the above-referenced action that contained two related material misstatements. In Paragraph 5(b) of your Affirmation you state that "In June 2013, while the appeals were pending, the Trump Group settled with Orly, acting individually and for the Orly Trust." In Paragraph 10 you state "all of Orly's and the Orly Trust's claims against the Trump Group were resolved in the June 2013 Settlement and dismissed in connection with the Stipulation of Discontinuance." Both these statements are incorrect and misleading to the First Department. We ask that you correct your two misstatements.

As you may know, your statements are directly contradicted by the following (as well as contemporaneous 2013 correspondence and transcripts of proceedings):

1. The unambiguous language of the June 2013 Settlement. ("CSA"). Orly settled only individually and as beneficiary; she did not settle Orly Trust claims. Indeed, the CSA expressly defines the Orly Trust as a non-settling party, CSA at 3, and the Orly Trust was not included in any release of claims. Emphasizing that the CSA does not release Orly Trust claims, the CSA directs Orly and the rest of the AG Group to take necessary actions to "cause the Orly Genger 1993 Trust to release any and all claims against the Trump Group Released Parties" in the future. *Id.* at 16. *A fortiori*, had the Orly Trust's claims been released in the CSA there would be no reason to include language about "causing" the release of Orly Trust claims in the future.

2. The unambiguous language of the New York Supreme Court's So-Ordered Stipulation of Dismissal. The So-Ordered Stipulation of Dismissal discontinued claims that Orly

ZEICHNER ELLMAN & KRAUSE LLP

John Boyle, Esq.
August 17, 2015
Page 2

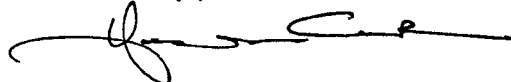
brought individually and as beneficiary, but, like the CSA, did not dismiss Orly Trust claims (indeed, language dismissing Orly Trust claims was specifically removed). The Stipulation of Dismissal expressly left Orly Trust claims un-settled, and also lifted the injunctions that had heretofore prevented the Orly Trust from prosecuting its beneficial ownership claims to the Orly Trust TRI Shares in the earlier-filed Dalia Delaware action, so that the Orly Trust could prosecute its still-existing claims.

3. The Trump Group's August 2013 Settlement of Orly Trust claims in Delaware. On or about August 30, 2013, taking advantage of the fact that the CSA did not settle trust claims and the termination of the injunctions, the Trump Group settled the Orly Trust's claims in the Delaware courts, by entering into the "So-Ordered" August 30, 2013 Stipulation in the Delaware Chancery Court action that Dalia commenced on behalf of the Orly Trust. *A fortiori*, had the Orly Trust's claims been released in the CSA there would be no reason for you or your client to settle those same claims two months later.

4. Both the United States District Court and the New York County Supreme Court have recognized that the CSA did not settle the Orly Trust claims. See Genger v. Genger, 2015 U.S. Dist. LEXIS 649, *9-10 (S.D.N.Y. Jan. 5, 2015) ("The [June] 2013 Settlement Agreement does not waive any of the Orly Trust's claims."); 3/20/14 Decision and Order in this action at 4 ("in the [June 2013] settlement agreement, Orly stops short of releasing derivative claims").

In light of the foregoing, please correct your material misstatements to the First Department. Thank you.

Sincerely yours,



Yoav M. Griver

YMG/asl

cc: Paul D. Montclare
Lauren J. Wachtler
Brian T. Stapleton
Desmond C.B. Lyons
John Dellaportas
Robert A. Meister
Judith Lisa Bachman
Ira Tokayer

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September 28, 2015

BY EMAIL

Thomas J. Allingham II, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19899

John Boyle, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 198999

Re: June 16, 2013 Confidential Settlement Agreement between the
Trump Group and the AG Group ("the Settlement Agreement")

Counsel:

We represent Orly Genger. We have reviewed the various correspondence, court filings and decisions regarding the Settlement Agreement and do not intend to engage in a letter writing campaign. As we are sure you know, the Settlement Agreement has not been modified or amended and Judge Jaffe has not changed her prior rulings. Section 17 of the Settlement Agreement requires that all parties -- including Ms. Genger -- consent in writing to an amendment or modification of the agreement, and, to date, Ms. Genger has not provided her written consent to any such amendment or modification. No party can unilaterally amend the Agreement. Your latest conduct appears to be an attempt to make such unilateral modifications. Though Ms. Genger has released certain claims against the Trump Group by entering into the Settlement Agreement, she has not released claims against the Trump Group for a breach of the Settlement Agreement itself. We do not wish to engage in any further litigation with your clients, but if your conduct continues, we will have no choice but to do so. If you would like to discuss this matter further, please call me.

Sincerely,


Eric D. Herschmann

cc: Yoav Griver, Esq. (by email)



GRANTED

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

DALIA GINGER, as Trustee of the
Orly Genger 1993 Trust,

Plaintiff,

v.

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC,
TRANS-RESOURCES, INC., and
TPR INVESTMENT ASSOCIATES, INC.

Defendants.

C.A. No. 6906-CS

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC, and
TRANS-RESOURCES, INC.,

Counterclaim and Crossclaim
Plaintiffs,

v.

DALIA GINGER, as Trustee of the
Orly Genger 1993 Trust,

Counterclaim Defendant,

and

TPR INVESTMENT ASSOCIATES, INC.,

Crossclaim Defendant

TPR INVESTMENT ASSOCIATES, INC.,
Counterclaim and Crossclaim
Plaintiff,

v. :
:
DALIA GENDER, as Trustee of the :
Orly Genger 1993 Trust, :
:
Counterclaim Defendant, :
:
and :
:
TR INVESTORS, LLC, GLENCLOVA :
INVESTMENT CO., NEW TR EQUITY I, :
LLC, NEW TR EQUITY II, LLC, and :
TRANS-RESOURCES, INC., :
:
Crossclaim Defendant :

STIPULATION AND PROPOSED ORDER OF DISMISSAL

Plaintiff/Counterclaim Defendant Dalia Genger, as Trustee of the Orly Genger 1993 Trust (the "Trustee of the Orly Trust"), Defendants/Counterclaim and Crossclaim Plaintiffs/Crossclaim Defendants TR Investors, LLC, Glenclova Investment Co., New TR Equity I, LLC, New TR Equity II, LLC and Trans-Resources, Inc. (collectively, the "Trump Group") and Defendant/Counterclaim and Crossclaim Plaintiff/Crossclaim Defendant TPR Investment Associates, Inc. ("TPR"), through the undersigned counsel, pursuant to Chancery Court Rules 41(a)(1)(ii) and 41(1)(c), hereby stipulate and agree as follows:

1. In the action styled *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (the "3994 Action"), the Court found that (i) the transfers in October 2004 of Trans-Resources, Inc. ("Trans-Resources") stock out of TPR were in violation of the March 2001 Stockholders Agreement among Trans-Resources, TPR, TR Investors, LLC and Glenclova Investment Co., (ii) the transfers were void and the

stock reverted to TPR, and (iii) the Trump Group had the right to buy all of the improperly transferred Trans-Resources stock from TPR. These determinations and findings were essential to the Court's determinations and findings in the 3994 Action.

2. The Trump Group, having closed on the purchase of the so-called Orly Trust Shares (representing 1102.8 shares of Trans-Resources stock) pursuant to and under the terms of the Side Letter Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group's right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of Trans-Resources purportedly transferred by TPR to the Orly Genger 1993 Trust. As a result, the Trump Group owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to all authorized and issued shares of Trans-Resources.¹

3. The \$10,314,005 plus accrued interest in proceeds from the sale referenced in paragraph 2 above currently held in escrow (the "Sale Proceeds") shall remain in escrow, pursuant to that Escrow Agreement between and among all of the parties hereto, Orly Genger, as beneficiary of the Orly Trust, and Pedowitz & Meister LLP, as escrow agent, until such time as a court in New York shall direct the disposition of the Sale Proceeds, or as the parties to such Escrow Agreement shall otherwise jointly agree, provided that the escrow agent may interplead the Sale

¹ This amount equals 5,676.4428 Trans-Resources shares and includes all of the shares that were determined to be owned by the Trump Group in the 3994 Action, in the action captioned *TR Investors v. Genger*, C.A. No. 6697-CS (Del. Ch.) and that are the subject of the above-captioned litigation.

Proceeds into a court in New York at any time. Upon the so-ordering of paragraphs 1-2 above concerning beneficial ownership, the Trump Group shall disclaim any and all claims to the Sale Proceeds and any and all rights under the Escrow Agreement. Nothing herein shall constitute an adjudication of any claim for monetary damages pending in any other Court.

4. The claims brought on behalf of the Orly Genger 1993 Trust by the Trustee of the Orly Trust against the Trump Group are dismissed with prejudice and the claims brought by the Trump Group against the Orly Trust and TPR are dismissed with prejudice.
5. The claims brought by TPR for the Sale Proceeds against the Trustee of the Orly Trust and the Trump Group have already been dismissed without prejudice.

6. Each party shall bear its own costs.

/s/ Thomas J. Allingham

Thomas J. Allingham II (I.D. No. 476)
Anthony W. Clark (I.D. No. 2015)
Douglas D. Herrmann (I.D. No. 4872)
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/s/ Colm F. Connolly

Colm F. Connolly (I.D. No. 3151)
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*Attorneys for TR Investors, LLC, Glenclova
Investment Co., New TR Equity I, LLC,
New TR Equity II, LLC, and Trans-
Resources, Inc.*

*Attorneys for TPR Investment Associates,
Inc.*

/s/ Jeremy D. Anderson

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*Attorneys for Dalia Genger, as Trustee of
the Orly Genger 1993 Trust*

IT IS SO ORDERED this _____ day of _____, 2013.

Chancellor Leo E. Strine, Jr.

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Leo E Strine

File & Serve

Transaction ID: 53943155

Current Date: Aug 30, 2013

Case Number: 6906-CS

Case Name: Genger, Dalia vs T R Investors LLC

Court Authorizer: Strine, Leo E

/s/ Judge Strine, Leo E

FISH & RICHARDSON P.C.

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

August 9, 2013

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*Via LexisNexis File & ServeXpress and
Hand Delivery*

The Hon. Leo E. Strine, Jr.
Chancellor
COURT OF CHANCERY
New Castle County Courthouse
500 North King Street, Suite 1551
Wilmington, DE 19801

Re: *Dalia Genger, as Trustee of the Orly Genger 1993 Trust v.
TR Investors, LLC, et al., C.A. No. 6906-CS*

Dear Chancellor Strine:

During the status conference with the Court on August 1, 2013, Your Honor ordered me to confer with Dalia Genger regarding her willingness to agree to settle the above-captioned case. Having done so, I can report back to the Court that Dalia desires to settle this action. However, as trustee of the Orly Genger Trust, Dalia needs to understand Orly's position regarding the Trust's beneficial ownership of the shares, particularly in light of preliminary injunctions issued by the New York courts.

We have reason to believe that Orly's position was disclosed in a Settlement Agreement with the Trump Group in one of the New York cases, but the Trustee has not been provided a copy of that agreement. While the Settlement Agreement apparently was made confidential by the parties, Mr. Allingham represented to the Court that the Trump Group is willing to produce the agreement if so ordered. Once the Trustee understands Orly's position, she will be in a position to conclude whether to agree that the shares of Trans-Resources stock transferred by TPR to the Orly Genger 1993 Trust are beneficially owned by the Trump Group.

Alternatively, if Orly gives the Trustee written consent to sign the enclosed stipulation of dismissal, the Trustee will immediately execute the stipulation in the form attached. Counsel for Dalia, TPR and the Trump Group discussed the best way to approach Orly to get her written consent to the stipulation of dismissal and decided that Mr. Allingham, given that he settled one of the New York cases with Orly, should be the intermediary. While Orly has not yet provided her written consent, it is



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FISH & RICHARDSON P.C.

The Hon. Leo E. Strine, Jr.
August 9, 2013
Page 2

my understanding from Mr. Allingham that Orly intends to submit a letter to the Court – on which I expect that she will copy Dalia – regarding her position as to the stipulation of dismissal.

Respectfully yours,

/s/ Jeremy D. Anderson

Jeremy D. Anderson
Delaware Bar No. 4515

JDA/phb
Enclosure – form of Stipulation of Dismissal

Cc (w/encls.) (*via LexisNexis File & ServeXpress*):
Thomas J. Allingham II (DE Bar #476)
Douglas D. Herrmann (DE Bar #4872)
Colm F. Connolly (DE Bar #3151)
Amy M. Dudash (DE Bar #5741)

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August 13, 2013

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JORDANAY L. BONTA, PARALEGAL
VIA UPS Overnight

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William Wachtel, Esq.
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885 Second Avenue
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Re: *In Matter of Application of Orly Genger for removal of Dalia Genger as Trustee of The Orly Genger 1993 Trust u/a Arie Genger*, Surg. Ct, N. Y. Co. File no 0017/2008

Arie Genger and Orly Genger, in her individual capacity and on behalf of the ORLY Genger 1993 TRUST v. Sagi Genger et al., Supreme Court, New York County index no. 651089/2010

Dear Yoav, Ralph and Bill:

As counsel for Dalia Genger, as Trustee of the Orly Genger 1993 Trust, we notify you, as counsel for Orly Genger, that the Trustee received the attached proposed Stipulation of Dismissal of the action *Dalia Genger, as Trustee of the Orly Genger 1993 Trust v. TR Investors, LLC, et al.*, Del. Chancery Ct. C.A. No. 6906-CS, which if signed and filed would eliminate any claim that the Orly Genger 1993 Trust has any ownership interest in shares of Trans-Resources, Inc., and she is considering signing it. I refer to the proposed Stipulation for all its terms.

Cordially,

Robert A. Meister

Encl.

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

DALIA GENDER, as Trustee of the
Orly Genger 1993 Trust,

Plaintiff,

v.

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC,
TRANS-RESOURCES, INC., and
TPR INVESTMENT ASSOCIATES, INC.

Defendants.

C.A. No. 6906-CS

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC, and
TRANS-RESOURCES, INC.,

Counterclaim and Crossclaim
Plaintiffs,

v.

DALIA GENDER, as Trustee of the
Orly Genger 1993 Trust,

Counterclaim Defendant,

and

TPR INVESTMENT ASSOCIATES, INC.,

Crossclaim Defendant

TPR INVESTMENT ASSOCIATES, INC.,
Counterclaim and Crossclaim
Plaintiff,

v.

DALIA GENDER, as Trustee of the
Orly Genger 1993 Trust,

Counterclaim Defendant,

and

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC, and
TRANS-RESOURCES, INC.,

Crossclaim Defendant

STIPULATION OF DISMISSAL

Plaintiff/Counterclaim Defendant Dalia Genger, as Trustee of the Orly Genger 1993 Trust (the "Trustee of the Orly Trust"), Defendants/Counterclaim and Crossclaim Plaintiffs/Crossclaim Defendants TR Investors, LLC, Glenclova Investment Co., New TR Equity I, LLC, New TR Equity II, LLC and Trans-Resources, Inc. (collectively, the "Trump Group") and Defendant/Counterclaim and Crossclaim Plaintiff/Crossclaim Defendant TPR Investment Associates, Inc. ("TPR"), through the undersigned counsel, pursuant to Chancery Court Rules 41(a)(1)(ii) and 41(1)(c), hereby stipulate and agree as follows:

1. In the action styled *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (the "3994 Action"), the Court found that (i) the transfers in October 2004 of Trans-Resources, Inc. ("Trans-Resources") stock out of TPR were in violation of the March 2001 Stockholders Agreement among Trans-Resources, TPR, TR Investors, LLC and Glenclova Investment Co., (ii) the transfers were void and the stock reverted to TPR, and (iii) the Trump Group had the right to buy all of the improperly transferred Trans-Resources stock from TPR.

These determinations and findings were essential to the Court's determinations and findings in the 3994 Action.

2. The Trump Group, having closed on the purchase of the so-called Orly Trust Shares (representing 1102.8 shares of Trans-Resources stock) pursuant to and under the terms of the Side Letter Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group's right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of Trans-Resources purportedly transferred by TPR to the Orly Genger 1993 Trust. As a result, the Trump Group owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to all authorized and issued shares of Trans-Resources.¹
3. The \$10,314,005 plus accrued interest in proceeds from the sale referenced in paragraph 2 above currently held in escrow (the "Sale Proceeds") shall remain in escrow, pursuant to that Escrow Agreement between and among all of the parties hereto, Orly Genger, as beneficiary of the Orly Trust, and Pedowitz & Meister LLP, as escrow agent, until such time as the parties to such Escrow Agreement jointly agree on the disposition of the Sale Proceeds, or as a court in New York shall otherwise direct.
4. The claims brought on behalf of the Orly Genger 1993 Trust by the Trustee of the Orly Trust against the Trump Group are dismissed with prejudice and the claims brought by the Trump Group against the Orly Trust and TPR are dismissed with prejudice.

¹ This amount equals 5,676.4428 Trans-Resources shares and includes all of the shares that were determined to be owned by the Trump Group in the 3994 Action, in the action captioned *TR Investors v. Genger*, C.A. No. 6697-CS (Del. Ch.) and that are the subject of the above-captioned litigation.

5. The claims brought by TPR for the Sale Proceeds against the Trustee of the Orly Trust and the Trump Group are dismissed without prejudice.

6. Each party shall bear its own costs.

/s/

Thomas J. Allingham II (I.D. No. 476)
Anthony W. Clark (I.D. No. 2015)
Douglas D. Herrmann (I.D. No. 4872)
Amy C. Huffman (I.D. No. 5022)
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/s/

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*Attorneys for TR Investors, LLC, Glenclova
Investment Co., New TR Equity I, LLC,
New TR Equity II, LLC, and Trans-
Resources, Inc.*

*Attorneys for TPR Investment Associates,
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/s/

Jeremy D. Anderson (I.D. No. 4515)
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P.O. Box 1114
Wilmington, Delaware 19899

*Attorneys for Dalia Genger, as Trustee of
the Orly Genger 1993 Trust*

IT IS SO ORDERED this _____ day of _____, 2013.

Chancellor Leo E. Strine, Jr.

ZEICHNER ELLMAN & KRAUSE LLP

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NEW YORK, NEW YORK 10022
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YOAV M. GRIVER
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August 16, 2013

BY EMAIL

Robert Meister, Esq.
Pedowitz & Meister LLP
570 Lexington Avenue
New York, NY 10022
robert.meister@pedowitzmeister.com

Dalia Delaware Action

Dear Robert:

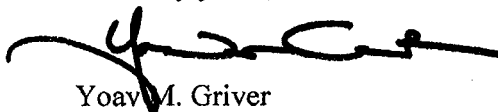
I received your August 13, 2013 letter with the attached proposed stipulation of dismissal. I also have a copy of Dalia Genger's August 9, 2013 letter to the Delaware Chancery Court in which she represented that she would not sign the stipulation unless and until "Orly gives the Trustee written consent to sign" it.

As currently written, the stipulation is unacceptable to Orly.

I ask that you specifically confirm, by close of business on Monday August 19, 2013, that Dalia will not sign any form of stipulation absent Orly's review and written consent to same. Thank you.

Please feel free to call me if you have any questions.

Sincerely yours,



Yoav M. Griver

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August 26, 2013

The Honorable Leo E. Strine, Jr.
Chancellor
Court of Chancery
New Castle County Courthouse
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: Dalia Genger as Trustee v. TR Investors, LLC, et al.
Civil Action No. 6906-CS

Dear Chancellor Strine:

We are counsel to Orly Genger in various actions pending in the State of New York. We write to follow up on certain matters we addressed in our letter to your Honor dated August 12, 2013:

1. We note that Dalia Genger's August 16 Status Report to your Honor stated that she would not resign as Trustee of the Orly Genger Trust, but would not give a reason. For the reasons discussed in our prior letter, we can only conclude that her motivation is to continue to help her son Sagi to the detriment of her daughter Orly, the beneficiary of the Orly Trust. That help is designed to assist Sagi in his ongoing efforts to take for his own benefit the proceeds of the sale of both the Arie Shares and the Orly Shares (what your Honor referred to as "winning the Powerball").

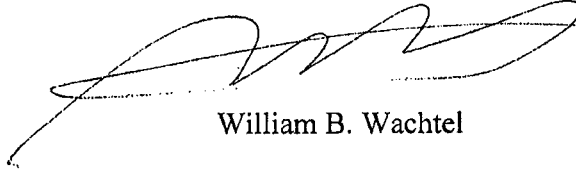
2. Dalia's August 23 Status report incompletely describes certain discussions between our office and Dalia's New York counsel. In an effort to facilitate the resolution of the matters pending before your Honor, we reviewed the draft Stipulation which the parties to this case had drafted, which would dismiss with prejudice the claims between the Orly Trust and the Trump Group, and dismiss without prejudice TPR's claim to the proceeds of that sale (the "Sale Proceeds"). We were told (as was the Court) by Dalia's New York counsel that Dalia would not

The Honorable Leo E. Strine, Jr.
August 22, 2013
Page 2 of 2

execute the Stipulation without Orly's consent. We requested certain revisions to the Stipulation, including an explicit recital that this Court had made no findings as to the ownership of the Sale Proceeds, an issue which would be adjudicated in New York. The Trump Group agreed to modify the Stipulation as we requested, and we had every reason to believe that Dalia would consent as well, because we modified the draft Stipulation to accommodate Dalia's counsel's concerns. Dalia's counsel suddenly told us in the middle of last week that Dalia needed more time to consider the issue. Over this past weekend, Dalia's counsel told us that the language we had proposed was not acceptable to TPR (*i.e.*, to Sagi). Dalia's counsel has not articulated any other reason why our proposed language is no longer acceptable to Dalia, and we believe that it accommodates both Dalia's concerns and the needs of the Trumps. (A copy of the draft Stipulation is enclosed for your Honor's convenience.)

Orly's counsel remains available to the Court if we can assist in any way in resolving this matter.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Wachtel', with a long horizontal flourish extending to the right.

William B. Wachtel

Cc(w/ encl): Jeremy D. Anderson, Esq.
Thomas Allingham III, Esq.
Amy M. Dudash, Esq.
John Dellaportas, Esq.

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

DALIA GINGER, as Trustee of the
Orly Genger 1993 Trust,

Plaintiff,

v.

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC,
TRANS-RESOURCES, INC., and
TPR INVESTMENT ASSOCIATES, INC.

Defendants.

C.A. No. 6906-CS

TR INVESTORS, LLC, GLENCLOVA
INVESTMENT CO., NEW TR EQUITY I,
LLC, NEW TR EQUITY II, LLC, and
TRANS-RESOURCES, INC.,

Counterclaim and Crossclaim
Plaintiffs,

v.

DALIA GINGER, as Trustee of the
Orly Genger 1993 Trust,

Counterclaim Defendant,

and

TPR INVESTMENT ASSOCIATES, INC.,

Crossclaim Defendant

TPR INVESTMENT ASSOCIATES, INC.,
Counterclaim and Crossclaim
Plaintiff,

v. :
:
DALIA GINGER, as Trustee of the :
Orly Genger 1993 Trust, :
:
Counterclaim Defendant, :
:
and :
:
TR INVESTORS, LLC, GLENCLOVA :
INVESTMENT CO., NEW TR EQUITY I, :
LLC, NEW TR EQUITY II, LLC, and :
TRANS-RESOURCES, INC., :
:
Crossclaim Defendant :

STIPULATION OF DISMISSAL

Plaintiff/Counterclaim Defendant Dalia Genger, as Trustee of the Orly Genger 1993 Trust (the "Trustee of the Orly Trust"), Defendants/Counterclaim and Crossclaim Plaintiffs/Crossclaim Defendants TR Investors, LLC, Glenclova Investment Co., New TR Equity I, LLC, New TR Equity II, LLC and Trans-Resources, Inc. (collectively, the "Trump Group") and Defendant/Counterclaim and Crossclaim Plaintiff/Crossclaim Defendant TPR Investment Associates, Inc. ("TPR"), through the undersigned counsel, pursuant to Chancery Court Rules 41(a)(1)(ii) and 41(1)(c), hereby stipulate and agree as follows:

1. In the action styled *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (the "3994 Action"), the Court found that (i) the transfers in October 2004 of Trans-Resources, Inc. ("Trans-Resources") stock out of TPR were in violation of the March 2001 Stockholders Agreement among Trans-Resources, TPR, TR Investors, LLC and Glenclova Investment Co., (ii) the transfers were void and the stock reverted to TPR, and (iii) the Trump Group had the right to buy all of the improperly transferred Trans-Resources stock from TPR.

These determinations and findings were essential to the Court's determinations and findings in the 3994 Action.

2. The Trump Group, having closed on the purchase of the so-called Orly Trust Shares (representing 1102.8 shares of Trans-Resources stock) pursuant to and under the terms of the Side Letter Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group's right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of Trans-Resources purportedly transferred by TPR to the Orly Genger 1993 Trust. As a result, the Trump Group owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to all authorized and issued shares of Trans-Resources.¹
3. Nothing contained herein shall be construed in any manner whatsoever as a determination, directly or indirectly, as to which party or parties have a beneficial interest in, and/or entitlement or right to, the proceeds paid by the Trump Group pursuant to the Side Letter Agreement.
4. The \$10,314,005 plus accrued interest in proceeds from the sale referenced in paragraph 2 above currently held in escrow (the "Sale Proceeds") shall remain in escrow, pursuant to that Escrow Agreement between and among all of the parties hereto, Orly Genger, as beneficiary of the Orly Trust, and Pedowitz & Meister LLP, as escrow agent, until such time as the parties to such Escrow Agreement jointly agree on the disposition of the Sale

¹ This amount equals 5,676.4428 Trans-Resources shares and includes all of the shares that were determined to be owned by the Trump Group in the 3994 Action, in the action captioned *TR Investors v. Genger*, C.A. No. 6697-CS (Del. Ch.) and that are the subject of the above-captioned litigation.

Proceeds, or as a court in New York shall otherwise direct, provided that the escrow agent may interplead the Sales Proceeds into such a court.

5. The claims brought on behalf of the Orly Genger 1993 Trust by the Trustee of the Orly Trust against the Trump Group are dismissed with prejudice and the claims brought by the Trump Group against the Orly Trust and TPR are dismissed with prejudice.
6. The claims brought by TPR for the Sale Proceeds against the Trustee of the Orly Trust and the Trump Group are dismissed without prejudice.
7. Each party shall bear its own costs.

/s/ _____
Thomas J. Allingham II (I.D. No. 476)
Anthony W. Clark (I.D. No. 2015)
Douglas D. Herrmann (I.D. No. 4872)
Amy C. Huffman (I.D. No. 5022)
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*Attorneys for TR Investors, LLC, Glenclova
Investment Co., New TR Equity I, LLC,
New TR Equity II, LLC, and Trans-
Resources, Inc.*

/s/ _____
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*Attorneys for Dalia Genger, as Trustee of
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/s/ _____
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(302) 574-3000

*Attorneys for TPR Investment Associates,
Inc.*

IT IS SO ORDERED this _____ day of _____, 2013.

Chancellor Leo E. Strine, Jr.

13 CV 8243

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

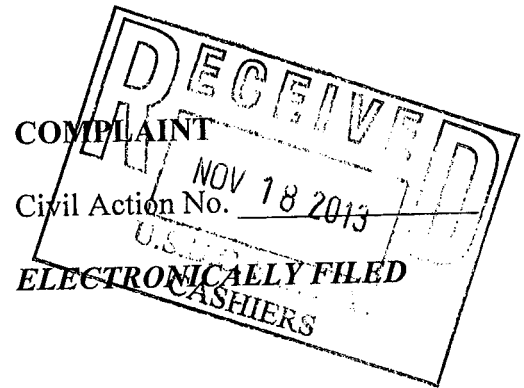
TPR INVESTMENT ASSOCIATES, INC.,

Plaintiff,

v.

PEDOWITZ & MEISTER LLP, as escrow
agent, DALIA GENDER, as trustee of the Orly
Genger 1993 Trust, and ORLY GENDER, as
beneficiary of the Orly Genger 1993 Trust,

Defendants.



Plaintiff TPR Investment Associates, Inc. ("TPR"), through its attorneys at Morgan, Lewis & Bockius LLP, by way of its Complaint against defendants Pedowitz & Meister LLP (the "Pedowitz firm"), as escrow agent, Dalia Genger ("Dalia"), as trustee of the Orly Genger 1993 Trust (the "Orly Trust"), and Orly Genger ("Orly"), as beneficiary of the Orly Genger 1993 Trust, hereby alleges as follows:

SUMMARY OF CLAIM

1. By this action, TPR seeks a permanent injunction directing the Pedowitz firm, as escrow agent, to release approximately \$10.3 million in funds held in escrow, which funds belong to TPR as a result of its sale of shares in a company called Trans-Resources, Inc. ("TRI" and the "TRI Share Sale Proceeds"). All of the issues surrounding the ownership of the TRI Share Sale Proceeds have now been duly litigated, such that there are final judicial findings which conclusively establish TPR's entitlement to those funds. Because, however, Orly (as beneficiary of the Orly Trust) continues to claim those funds, the Pedowitz firm has declined to release the funds to TPR absent an order from a court of competent jurisdiction in the State of New York. Accordingly, TPR now brings this injunction action.

PARTIES

2. Plaintiff TPR is a Delaware corporation with its principal place of business in Greenwich, Connecticut. In August 2008, TPR sold 1102.8 shares of common stock in TRI for approximately \$10.3 million – the TRI Share Sale Proceeds at issue in this suit.

3. Upon information and belief, defendant the Pedowitz firm is a New York limited liability partnership with its principal place of business in New York, New York. The Pedowitz firm serves as escrow agent for the TRI Share Sale Proceeds. Upon information and belief, the Pedowitz firm maintains the TRI Share Sale Proceeds in an escrow account at JP Morgan Chase Bank in New York, New York.

4. Defendant Dalia is the sole trustee of the Orly Trust and resides in New York, New York. The Orly Trust was created under a December 13, 1993 agreement among Arie Genger, Grantor, then residing in New York, New York, and the Orly Trust's original trustees, Lawrence M. Small and the late Sash A. Spenser, who are no longer its trustees.

5. Upon information and belief, defendant Orly resides in New York, New York. She is the sole non-contingent beneficiary of the Orly Genger 1993 Trust.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because the parties are diverse, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because all of the defendants reside in this District, because a substantial part of the events giving rise to the claims in this proceeding occurred in this District, and because the property that is the subject of this action is situated in this District.

FACTS

1. In August 2008, TPR sold 1102.8 shares of common stock in TRI (the “TRI Shares”) to a group of affiliated parties jointly referred to as the “Trump Group” for a sale price of approximately \$10.3 million. The sale transaction closed in February 2011.

2. Because the Orly Trust claimed a beneficial ownership interest in the shares (based upon an earlier 2004 transfer of the TRI Shares to the Orly Trust, which transfer was adjudicated to be void under the TRI Stockholders’ Agreement), the parties agreed to place the TRI Shares Proceeds in escrow. In September 2010, the Trump Group entered into an Escrow Agreement with TPR, the Orly Trust, Orly, and the Pedowitz firm (the “Escrow Agreement”). Pursuant thereto, when the Trump Group closed on its purchase in February 2011, it caused \$10,314,005 to be deposited in escrow with the Pedowitz firm.

3. On August 11, 2011, the Pedowitz firm filed an interpleader action pursuant to 28 U.S.C. § 1135 in this Court, naming TPR, the Orly Trust, Orly Genger personally, and the Trump Group as parties to the action. *See Pedowitz & Meister LLP v. TPR Inv. Assocs., Inc., et al.*, 1:11-cv-05602, Doc. #1 (S.D.N.Y. Aug. 11, 2011). The Pedowitz firm contended that two or more of TPR, the Orly Trust, Orly and the Trump Group were adverse claimants to the TRI Share Sale Proceeds, and consequently sought a determination as to which party was entitled to the funds. The Pedowitz firm noted that, while no party to the September 1, 2010 Escrow Agreement had, as of then, demanded payment of escrowed funds, Orly, as beneficiary of the Orly Trust, had objected to any release of the funds without her consent.

4. In connection with its interpleader complaint, the Pedowitz firm deposited the TRI Share Sale Proceeds in the amount of \$10,332,779.82 with the Clerk of the District Court for the Southern District of New York.

5. On June 14, 2012, this Court dismissed the Pedowitz firm's interpleader suit, because it found that the dispute actually concerned beneficial ownership over the underlying TRI Shares, rather than the TRI Share Sale Proceeds. In doing so, this Court held:

All potential claimants acknowledge that . . . if the 2004 transfer of shares to . . . the Orly Trust is found to be invalid, then TPR had the right to sell the shares to the Trump Group, and TPR would be entitled to the interpleaded funds.

Exh. A at 23. (*Glenclova Inv. Co. v. Trans-Resources, Inc. et al.*, 1:08-cv-07140-JFK, Doc. #164, *Pedowitz & Meister LLP v. TPR Inv. Assocs., Inc., et al.*, 1:11-cv-05602-JFK, Doc. #64 (S.D.N.Y. June 14, 2012) (J. Keenan) (emphasis added)).

6. This Court further expressed "its stated preference that the question of beneficial ownership of the ... [TRI] Shares be decided in a state court." *Id.* at 49. As the Court explained: "either of the [Delaware and New York] state courts is well-equipped to do so, as each will be guided by the final judgment entered in Delaware." *Id.* at 33. (As explained below, the Chancery Court in Delaware has since adjudicated beneficial ownership of the TRI Shares.)

7. No appeals were taken from the June 14, 2012 Order by Orly or anyone else. Accordingly, that decision is now final.

8. On June 28, 2012, this Court entered an order directing the Clerk to return the interpleaded funds from the registry of the Court with interest to the Pedowitz firm by a federal wire to JP Morgan Chase Bank, ABA routing # 021000021, for credit to account # 2984572582. *See Pedowitz & Meister LLP v. TPR Inv. Assoc.*, 1:11-cv-05602-JFK, Doc. #65 (S.D.N.Y. June 28, 2012). Upon information and belief, the Pedowitz firm continues to hold the TRI Share Sale Proceeds in an escrow account at JP Morgan Chase Bank, NA. On November 18, 2013, the firm advised that, with interest, the current account balance is \$10,368,051.51.

9. Shortly after the Pedowitz firm filed the above-referenced interpleader action in

this Court, on October 4, 2011, Dalia, as trustee of the Orly Trust, commenced a plenary action in Delaware Chancery Court against the Trump Group and TPR, seeking a declaration that the Orly Trust was the true beneficial owner of the TRI Shares. *See Dalia Genger v. TR Investors, LLC, et al.*, C.A. No. 6906-CS (Del. Ch.).

10. On August 30, 2013, the Delaware Chancery Court entered a Stipulation and Order of Dismissal of that action, which determined that TPR was the beneficial ownership of the TRI Shares and had duly sold them to the Trump Group. After soliciting and considering comments from Orly personally, that Court found as follows:

1. In the action styled *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (the “3994 Action”), the Court found that (i) the transfers in October 2004 of [TRI] stock out of TPR [to, *inter alia*, the Orly Trust] were in violation of the March 2001 Stockholders Agreement among [TRI], TPR [and two members of the Trump Group] (ii) the transfers were void and the stock reverted to TPR, and (iii) the Trump Group had the right to buy all of the improperly transferred [TRI] stock from TPR. These determinations and findings were essential to the Court’s determinations and findings in the 3994 Action.

2. The Trump Group, having closed on the purchase of the [TRI] Shares (representing 1102.8 shares of [TRI] stock) pursuant to and under the terms of the Side Letter Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group’s right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of [TRI] purportedly transferred by TPR to the Orly ... Trust. As a result, the Trump Group owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to all authorized and issued shares of [TRI]. . . .

See Exh. B (*Dalia Genger v. TR Investors, LLC, et al.*, C.A. No. 6906-CS (Del. Ch. Aug. 30, 2013) (emphasis added).

11. As noted above, this Court had previously held on June 14, 2012 that: “All potential claimants acknowledge that . . . if the 2004 transfer of shares to . . . the Orly Trust is found to be invalid, then TPR had the right to sell the shares to the Trump Group, and TPR would be entitled to the interpleaded funds.” Exh. A at 23 (emphasis added.) Subsequent to that

ruling, the Delaware Chancery Court has now found that the 2004 transfer of the TRI Shares to the Orly Trust was void, and that the TRI Shares reverted to TPR, which in turn lawfully sold those shares to the Trump Group in 2008.

12. Tellingly, Orly no longer challenges this transaction. Rather, on June 19, 2013, Orly and the Trump Group, inter alia, stipulated and agreed as follows: “the Trump Group own, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of [TRI] purportedly transferred by TPR Investment Associates, Inc. in October 2004 to Arie and the Orly Genger 1993 Trust” (*i.e.*, what is referred to herein as the TRI Shares).

13. Nevertheless, Orly has since repudiated the finding of this Court in its June 14, 2012 Order that once beneficial ownership of the TRI Shares had been determined, that would necessarily also resolve ownership of the TRI Share Sale Proceeds. Specifically, in an August 12, 2013 letter to the Delaware Chancery Court, Orly’s counsel wrote that: “Orly has indeed settled all disputes between her and the Trump Group. As part of that settlement, Orly has acknowledged individually and in her capacity as the beneficiary of her trust that the Trump Group are the record and beneficial owners of the TRI shares which had been distributed to the Orly Trust. Orly has not, however, abandoned her claim to the proceeds of the sale of those shares against TPR and Sagi [Genger] ...” (emphasis added.)

14. Orly’s newly announced claim to the TRI Share Sale Proceeds is without basis. First, this Court has already adjudicated the claim against her, finding that the only two possible recipients of the TRI Share Sale Proceeds are the Trump Group (which has since disclaimed) and TPR. Second, even had it not, Orly has contractually sworn off the claim. Under §§ 2(b)(ii)-(iii) of the Escrow Agreement (which Orly executed as a beneficiary of the Orly Trust), Orly agreed that, in exchange for TPR’s agreement to place the TRI Share Sale Proceeds in escrow, either the

Trump Group or TPR, and no one else, would ultimately receive the funds.

15. Accordingly, all of the issues as to ownership of the TRI Shares and the accompanying TRI Share Sale Proceeds are now resolved. Nevertheless, the TRI Share Sale Proceeds remain in escrow with the Pedowitz firm, based on Orly's continuing claim to those funds, until a Court in New York directs their disposition. Specifically, the parties in Delaware stipulated and agreed, the Chancery Court ordered, as follows:

3. The \$10,314,005 plus accrued interest in proceeds from the sale referenced in paragraph 2 above currently held in escrow ... shall remain in escrow, pursuant to that Escrow Agreement between and among all of the parties hereto, Orly Genger, as beneficiary of the Orly Trust, and Pedowitz & Meister LLP, as escrow agent, until such time as a court in New York shall direct the disposition of the [TRI Share] Sale Proceeds, or as the parties to such Escrow Agreement shall otherwise jointly agree, provided that the escrow agent may interplead the Sale Proceeds into a court in New York at any time. ...

Id. (emphasis added).

16. Lastly, so as to make clear that nothing therein impacted the various monetary damage claims which the parties are asserting against one another in New York state court, the Stipulation and Order further provided that: "Nothing herein shall constitute an adjudication of any claim for monetary damages pending in any other Court." There is no claim pending in any other Court seeking ownership of the TRI Share Sale Proceeds. Orly is asserting common law monetary damage claims against TPR in New York state court, pursuant to a pleading which she jointly filed with her father, Arie Genger. In its June 14, 2012 Order, however, this Court held, as to that very same pleading: "while Arie asserts a beneficial ownership in the underlying [TRI] shares, in no case does he have a claim against the interpleaded funds themselves. Instead, Arie's numerous counterclaims seek money damages for breach of fiduciary duties that are ancillary to, and beyond the scope of, the Skadden interpleader." Exh. B at 22.

17. In light of the findings of both this Court and the Delaware Chancery Court

discussed above, on Monday morning, November 18, 2013, TPR contacted the Pedowitz firm, as escrow agent, and asked it to release the TRI Share Sale Proceeds to TPR. The Pedowitz firm declined to do so, absent written consent from all of the parties. In a submission filed with the New York State Supreme Court Appellate Division, First Department on November 13, 2013, however, Orly continues to take the position that the foregoing Court decisions “do not ‘invalidate[]’ Orly and the Orly Trust’s claim to the \$10.3 million” in TRI Share Sale Proceeds. Thus, no such consent will be forthcoming.

18. TPR therefore now brings this suit to compel the Pedowitz firm to release to TPR the TRI Share Sale Proceeds. TPR also names hereto, as interested parties, (i) Orly, who is the only other claimant to the TRI Share Sale Proceeds, and (ii) the Orly Trust, through which Orly claims the proceeds “as beneficiary”.¹

FIRST CAUSE OF ACTION Permanent Injunction

19. TPR hereby incorporates by reference Paragraphs 1 through 18, as though fully set forth herein.

20. As set forth above, TPR is entitled to the TRI Share Sale Proceeds currently held in the Escrow Account, because this Court has held that: “All potential claimants acknowledge that . . . if the 2004 transfer of shares to . . . the Orly Trust is found to be invalid, then TPR had the right to sell the shares to the Trump Group, and TPR would be entitled to the interpleaded funds.” Orly was a party to the interpleader case in which that finding was made (which finding was necessary to the dismissal decision), and she took no appeal from it.

¹ Paragraph 3 of the above-referenced August 30, 2013 Stipulation and Order of Dismissal entered by the Delaware Chancery Court further provides that: “Upon the so-ordering of paragraphs 1-2 above concerning beneficial ownership, the Trump Group shall disclaim any and all claims to the Sale Proceeds and any and all rights under the Escrow Agreement.” As those paragraphs have been so-ordered, the Trump Group has disclaimed any interest in the TRI Share Sale Proceeds, and accordingly it is not named in this action.

21. Thereafter, on August 30, 2013, the Delaware Chancery Court found that: “the Trump Group had the right to buy all of the improperly transferred [TRI] stock from TPR” and “[t]he Trump Group, having closed on the purchase of the [TRI] Shares (representing 1102.8 shares of [TRI] stock) pursuant to and under the terms of the Side Letter Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group’s right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares of [TRI] purportedly transferred by TPR to the Orly ...Trust.” The Chancery Court directed that the TRI Share Sale Proceeds shall remain in escrow “until such time as a court in New York shall direct the[ir] disposition.” *Id.*

22. Accordingly, TPR is entitled to the TRI Share Sale Proceeds.

23. The Pedowitz firm, as the escrow agent, has nevertheless declined to release the TRI Share Sale Proceeds to TRI absent an order from a Court in New York. Accordingly, it should be instructed to release the TRI Share Sale Proceeds in the Escrow Account, along with any interest accrued thereon, to TPR.

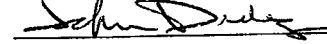
24. TPR does not seek monetary damages and has no adequate remedy at law.

WHEREFORE, TPR requests this Court to issue an Order: (a) permanently enjoining and directing the Pedowitz firm to release to TPR all of the TRI Share Sale Proceeds held in the Escrow Account, plus any and all accrued interest earned thereon, and (b) granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 18, 2013

MORGAN, LEWIS & BOCKIUS LLP

/s/ John Dellaportas



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TPR INVESTMENT ASSOCIATES, INC.,

Plaintiff,

v.

13-cv-8243 (JFK)

PEDOWITZ & MEISTER LLP,
as escrow agent,
et al.,

Defendants.

-----X

New York, N.Y.
April 29, 2014
3:00 p.m.

Before:

HON. JOHN F. KEENAN

District Judge

APPEARANCES

MORGAN, LEWIS & BOCKIUS, LLP
Attorneys for Plaintiff
BY: JOHN DELLAPORTAS, ESQ.
MARY C. PENNISI, ESQ.

ZEICHNER, ELLMAN & KRAUSE, LLP
Attorneys for Defendant Orly Genger
BY: YOAV M. GRIVER, ESQ.
BRYAN LEINBACH, ESQ.

PEDOWITZ & MEISTER, LLP
Defendant Pro Se
BY: ROBERT A. MEISTER, ESQ.

JUDITH BACHMAN, ESQ.
Attorney for Defendant Dalia Genger
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(In open court)
THE COURT: Good afternoon.
Before we get to the argument on the three motions, I
wanted to find out something. Mr. Meister?
MR. MEISTER: Yes, your Honor.
THE COURT: How are you? All right. Now, you
represent your firm as Pedowitz & Meister, right?
MR. MEISTER: Yes, your Honor.

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9 THE COURT: Do you any longer represent the Orly
10 Trust?
11 MR. MEISTER: Not in this action. I do in other
12 actions.
13 THE COURT: OK. Because I was concerned about the
14 possibility of a conflict.
15 MR. MEISTER: We did get waiver letters at the very
16 outset, your Honor.
17 THE COURT: All right. You did. But in this action,
18 Ms. Bachman, you're representing --
19 MS. BACHMAN: Ms. Genger, Dalia Genger, correct, as a
20 trustee of the Orly Trust.
21 THE COURT: You're representing Dalia Genger as
22 trustee of the Orly Trust?
23 MS. BACHMAN: That's correct, your Honor.
24 THE COURT: All right. Fine. I just wanted to make
25 sure I understood you.
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1 But you filed the briefs in this, Mr. Meister.
2 MR. MEISTER: I did, your Honor.
3 THE COURT: You did. All right. I just wanted to
4 make sure I knew who was where.
5 All right. So first we're going to have argument on
6 behalf of the motion that is being made to dismiss the action.
7 And that's by Orly. And, Mr. Leinbach, you're going to argue
8 that, or Mr. Griver?
9 MR. GRIVER: Mr. Griver, your Honor.
10 THE COURT: All right. I'll hear you.
11 MR. GRIVER: Thank you, your Honor. And I'll be
12 seeking today to dismiss the action of TPR as well as the
13 crossclaims and interpleader action filed by Dalia Genger and
14 by Pedowitz & Meister as escrow agent.
15 Your Honor, on June 14th, 2012, you told the parties
16 before you in no uncertain terms that this Court would not
17 allow itself to be strongarmed into haling Orly into federal
18 court. You reiterated that message on November 12, 2013, where
19 you stated, "It is inaccurate for TPR to suggest that the issue
20 of beneficial ownership is conclusively resolved." Yet, only
21 six days later, on November 18th, TPR came in and brought an
22 action, followed by the actions and claims of the other
23 respondents.
24 So we are here again despite your instruction. And we
25 are here on the flimsiest of grounds. There is a specific
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1 September 1 escrow agreement that expressly sets forth five and
2 only five enumerated rights in which proceeds -- and that's --
3 THE COURT: How do you fit this under subdivision 2 of
4 that escrow agreement? I don't see how you fit under that.
5 MR. GRIVER: Section 2 of the escrow agreement, your
6 Honor, there is no way that TPR fits within section 2 of that
7 escrow agreement. I absolutely agree with you.
8 THE COURT: All right.
9 MR. GRIVER: And that's a whole point. They come to
10 this Court and they ask you to direct the escrow agent to
11 disburse the escrow funds to it, \$10.6 million. But section 2
12 says, "No funds shall be disposed from escrow, from the escrow
13 account except in accordance with section 2." And there is no

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14 question that TPR --
15 THE COURT: Their argument is section 2, and you say
16 it doesn't apply.
17 MR. GRIVER: It does not apply. But that's not really
18 the argument, your Honor, because in their opposition brief,
19 they say, well, we kind of almost sort of applied. But "kind
20 of almost sort of" is not what you look for in escrow
21 agreements. You have to scrupulously adhere to the specific
22 terms. This was a negotiated agreement. Every one counts, and
23 section 2 has to be met, and they don't do it.
24 So instead they say to you this: TPR asks you not to
25 enforce the escrow agreement but to help them breach it. They
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1 ask you to ignore it. Respectfully, your Honor, this is not
2 what courts do. Courts do not amend or ignore agreements.
3 They enforce them.
4 TPR's argument is that there are final judicial
5 findings which conclusively established TPR's entitlement to
6 those funds. TPR is gone. One of those findings that they
7 claim exists is something that you said. "TPR takes one
8 statement out of this Court's 52-page opinion."
9 THE COURT: That's what all of you do.
10 MR. GRIVER: Excuse me?
11 THE COURT: I say, that's what all of you do in this
12 litigation, not just TPR. Everybody does it in this
13 litigation. I read the minutes. What was it? 75 pages or 77
14 pages from the Delaware Chancery Court by the Judge who now, as
15 I understand it, is the Chief Judge of Delaware. And he points
16 out that everybody picks words here.
17 Let me ask you a couple of questions. All right. The
18 state action claim, you're asserting an unjust enrichment claim
19 against TPR arising from a sale of the Orly Trust shares to the
20 Trump Group. Am I right so far?
21 MR. GRIVER: That's correct.
22 THE COURT: All right. Is that claim still viable, or
23 did Justice Jaffe dismiss it?
24 MR. GRIVER: No, Justice Jaffe did not dismiss it. It
25 is viable.

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1 THE COURT: Now. As I understand it, you have an
2 interlocutory appeal of certain rulings by the New York Supreme
3 Court. There are two New York cases, right?
4 MR. GRIVER: The two New York cases involving the
5 trust.
6 THE COURT: OK. One is on its way to the Court of
7 Appeals, I'm told?
8 MR. GRIVER: No. There is a motion seeking a leave to
9 appeal the unanimous decision of the Fourth Department.
10 THE COURT: In other words, you would like to get to
11 the Court of Appeal.
12 MR. GRIVER: TPR would like to get to the Court of
13 Appeal, Dalia Genger --
14 THE COURT: It's not a done deal yet.
15 Now, the second thing that's in the state court, as I
16 understand it, that's your interlocutory appeal. Right?
17 MR. GRIVER: That's correct.
18 THE COURT: All right. Now, is that still extant?

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19 MR. GRIVER: It is still extant. We are going to be
20 arguing that shortly, your Honor, in about a month.

21 THE COURT: Should I defer ruling on the motions here
22 until after the First Department rules? Did the First
23 Department case ever have anything to do with this situation
24 here?

25 MR. GRIVER: What Justice Jaffe did was, she dismissed
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1 some of our claims, but not others, including unjust enrichment
2 claims against Sagi Genger and TPR. TPR has cross-moved to
3 dismiss everything. So we have that the Court, in the
4 alternative, stay, and that is certainly something that the
5 Court can do, and that is to stay matters until the end of the
6 appeal process.

7 THE COURT: OK. Why does it matter whether I direct
8 the escrow agent, in other words, Pedowitz & Meister, to
9 release the 10.3 million to TPR? Even if I do that, don't you
10 still have your claims for money damages?

11 MR. GRIVER: We do have our claims for money damages,
12 your Honor, but --

13 THE COURT: Well, what difference does it make?

14 MR. GRIVER: Well, for one thing it would be violating
15 the escrow agreement. For another thing, there's no basis for
16 the Court to take that action. There has been no finding that
17 would permit the Court to do that. TPR has moved for summary
18 judgment, but there are issues of fact as to whether TPR has
19 the right to those moneys.

20 I'll give you one example. TPR is in the First
21 Department right now seeking leave to appeal to argue that they
22 have absolutely no right to those proceeds because they entered
23 into a settlement agreement in 2011 that gave all those
24 proceeds to the Orly Trust.

25 I'll give you another example. We have a special
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1 proceeding before Justice Jaffe right now where we claim that,
2 under the escrow agreement, because of the failure to timely
3 object under the specific express terms of the escrow
4 agreement, the escrow agent shall disburse those moneys to
5 Orly.

6 THE COURT: You've been litigating in New York State
7 Supreme for years, right?

8 MR. GRIVER: Correct.

9 THE COURT: Does the escrow agreement even mention New
10 York Supreme?

11 MR. MEISTER: It does not, your Honor.

12 THE COURT: I know it doesn't. That's why I asked the
13 question.

14 MR. GRIVER: Right. It does not, your Honor.

15 THE COURT: Yes. But you're saying to me that I can't
16 rewrite the escrow agreement, that I should read it strictly.
17 And it's your position that -- is it your position that New
18 York doesn't have the power to litigate the dispute over the
19 money?

20 MR. GRIVER: No, your Honor. This is not the first
21 time that we've been in front of you saying that the New York
22 State Court should be the one to decide it. There is no
23 question that it is a court of competent jurisdiction. The

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24 interpleader before your Honor, which was another attempt by
25 Pedowitz & Meister to give this Court jurisdiction, if you look
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1 at section 2.C.3 of the escrow agreement, it says that the only
2 thing that the escrow agent can do is to interplead the funds
3 in a court of competent jurisdiction in order to, quote, obtain
4 an order from such court requiring the other parties hereto to
5 commence an arbitration proceeding pursuant to the purchase
6 agreement to resolve all issues arising pursuant to this escrow
7 agreement, period, end quote.
8 Pedowitz & Meister cannot come in here and interplead
9 and ask you to decide who gets the proceeds. That's not what
10 the interpleader is for. That's the specific language of this
11 agreement. Nor can they come in and ask you to release them as
12 escrow agents. They can, under 2.C.2, resign. But the relief
13 that they seek is outside the specific language of the escrow
14 agreement. They simply can't do that under the escrow
15 agreement.

16 And, your Honor, I helped negotiated this escrow
17 agreement. This was a hard-fought document. And for them to
18 just say, well, now that we don't like the terms of that
19 agreement, why don't you, your Honor, ignore them, that's
20 unacceptable. That's not correct. That's not what this Court
21 should do.

22 And look, your Honor, they talk about your opinion as
23 giving TPR the right to the proceeds. Now, certainly your
24 Honor didn't think so when it issued its decision on November
25 12th, 2013, when you said that the issue of who beneficially
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1 owns the Orly Trust shares has not been decided. But look what
2 you said about the escrow agreement, in the opinion that they
3 cite as you having determined that they have the right to the
4 proceeds. On page 24, you note the fact that in the state
5 court the plaintiffs have, quote, privately contracted with the
6 potential plaintiffs in the form of an escrow agreement which
7 specifies the circumstances under which and to whom the escrow
8 funds are to be released. And then you go on to say, "Once a
9 court enters judgment on this issue, the escrow agent can
10 disburse the escrow funds to the prevailing plaintiffs in
11 accordance with guidance set forth in the escrow agreement."

12 So this opinion, the Delaware stipulation, none of
13 that gives TPR or Dalia or the escrow agent the authority to
14 ignore the escrow agreement, which is exactly what they do.

15 So TPR argues that dicta in your opinion somehow was a
16 determination of beneficial ownership. That's simply not true.
17 If you look at page 50 to 51 of your decision, you say exactly
18 what your finding is. And that is that the claims, the
19 Pedowitz interpleader is dismissed for lack of subject matter
20 jurisdiction or pursuant to the Court's discretion to abstain.
21 And then you say, the pending action is stayed pending
22 resolution of the beneficial ownership of the Arie shares and
23 Orly Trust shares in the state courts. Your Honor, the state
24 courts have not decided that. If you look at the Delaware
25 stipulation, which is their attempt to say that that happened,
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1 you'll see that that's not true at all. First of all, the
2 stipulation proposed an order of dismissal involved a case that
3 did not involve Orly Genger, and she was not a party to this
4 stipulation. Second of all, if you look at paragraph 5 of that
5 stipulation -- and that's Exhibit B to the TPR complaint -- TPR
6 claims that this Delaware stipulation conclusively establishes
7 TPR's rights to the proceeds. But look what Section 5 says.
8 "The claims brought by TPR for the sale of proceeds against the
9 trustee of the Orly Trust and the Trump Group have already been
10 dismissed without prejudice." As a matter of simple logic,
11 your Honor, this stipulation cannot determine TPR's rights to
12 the proceeds, when TPR's claims were previously dismissed.
13 We go on to say how paragraph 1 only talks about
14 findings that were actually canceled as to the Orly shares by
15 the Delaware Supreme Court. Paragraph 2 does not answer the
16 question who has the right to the proceeds or who was the
17 appropriate seller of those TRI shares. There's no question
18 now, because of the settlement between Orly as beneficiary and
19 the Trump Group, that the fact that they had the right to buy,
20 we no longer have any claims as to that. But we certainly are
21 claiming that TPR had no right to sell. That's what our unjust
22 enrichment claims are, your Honor. That's why we have a 2010
23 action that has been there for four years.

24 Unless the Court has --

25 THE COURT: You reserve how much time for rebuttal?

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1 MR. GRIVER: Five minutes.
2 THE COURT: All right. Thank you.
3 MR. GRIVER: Thank you.
4 THE COURT: All right. So next, we'll hear from,
5 Mr. Dellaportas is going to argue, right?
6 DELLAPORTAS: Thank, your Honor.
7 THE COURT: Would you use the lectern. That way the
8 people behind you can hear you. Thank you.
9 DELLAPORTAS: Hopefully I'll be able to balance all
10 this.
11 THE COURT: Put it on the rail there.
12 DELLAPORTAS: Thank you, your Honor.
13 And this is essentially my opposition to the motion to
14 dismiss, and also my -- in support of the cross-motion for
15 summary judgment.
16 THE COURT: Maybe I ought to take something up with
17 you right at the beginning before you get into your argument.
18 Not as long as you people but for some while I've had something
19 to do with this, and as I understood it, back when some of
20 these other cases were filed, TPR admitted that its principal
21 place of business was in New York City. Now, nobody has raised
22 this, not anybody before me here has raised it. But
23 jurisdiction is always something that's before me.
24 Now, as I read part of the 08 Civil 7140, that the
25 address for notice to TPR is care of Sagi Genger at 1211 Park

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1 Avenue. Also, in the decision at 910 F.Supp.2d 657 -- I got
2 this from the papers, I didn't make it up -- Sagi Genger is a
3 joint United States and Israeli resident residing at 1211 Park
4 Avenue.

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5 Now, at this point, you're saying that the reason that
6 I have jurisdiction is because there is diversity and that
7 TPR's principal place of business is in Connecticut, right?
8 DELLAPORTAS: Yes, your Honor. And I can explain.
9 THE COURT: What?
10 DELLAPORTAS: I can explain, if you'd like.
11 THE COURT: All right. Because we did a little
12 checking ourselves, and as I understand it -- and if I'm wrong
13 you correct me, and I'll certainly give you an opportunity to
14 say anything you want here -- as I understand it, Mr. Sagi
15 Genger put his house up, or the house, on Juniper Hill Road up
16 in Connecticut, in Greenwich, he put it up for sale. Where is
17 he living?
18 DELLAPORTAS: Connecticut, your Honor.
19 THE COURT: What?
20 DELLAPORTAS: Connecticut, your Honor.
21 THE COURT: Is he still at Juniper Hill, or is he
22 somewhere else?
23 DELLAPORTAS: I believe he's still at Juniper Hill.
24 This was never a home owner. That was a rental. Essentially
25 TPR has always been a Delaware corporation.
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1 THE COURT: I know that. The question I'm asking you
2 about is the principal place of business.
3 DELLAPORTAS: Until last summer his principal place of
4 business was 1211 Park Avenue, in New York. Now TPR, the
5 president is Mr. Genger and he maintains a home office, which
6 is the principal place of business. Last summer, Mr. Genger,
7 who has five children, two of his children have special needs.
8 And so they found a special school in Connecticut. And so the
9 entire family moved there. Over the last summer they moved
10 their house there and they moved the home office there. And
11 all the correct filings were made with the state of Connecticut
12 to make sure that's right. Now, we're still registered to do
13 business in New York. But the principal place of business is
14 now Connecticut. And before filing this we researched it, and
15 the case law says that you look to diversity questions and
16 citizenship at the time of the onset of the complaint.
17 THE COURT: OK. Go ahead. That's fine.
18 DELLAPORTAS: And the move has nothing to do with this
19 complaint or anything else. It had to do with the special
20 needs. We're happy to put in an affidavit to that effect.
21 As far as Mr. Genger being -- you asked something
22 about him being a joint U.S.-Israeli citizen?
23 THE COURT: Yes -- joint New York or U.S. and Israeli
24 citizenship is not what concerns me. It's the question of the
25 place of business.

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1 DELLAPORTAS: So we're satisfied that we have proper
2 diversity jurisdiction and we're properly before this Court,
3 your Honor.
4 If I can proceed to the substance.
5 THE COURT: Go ahead.
6 DELLAPORTAS: So essentially, your Honor, we're here
7 to enforce and implement the June 14th, 2012 order on its
8 terms. And I've read that it's dicta. We don't believe that
9 it's dicta. Your Honor, we were all before your Honor some

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10 time ago. And at the time, it was right after the Delaware
11 Supreme Court had ruled, somewhat ambiguously. And Mr. Meister
12 came at that time and said, there are adverse claimants, there
13 is vexation litigation. And your Honor said no. And I think,
14 you know, it wasn't the position we took, but in retrospect we
15 didn't appeal it. We think it was pretty common sense and the
16 legally correct decision, which is, there is no real adversity
17 here and thus no subject matter jurisdiction here under 28
18 U.S.C. 1335 because, as your Honor wrote, "All potential
19 claimants acknowledge that if Arie and the Orly Trust are
20 deemed -- if the 2004 transfer of shares to Arie and the Orly
21 Trust is found to be invalid, then TPR had the right to sell
22 the shares to the Trump Group and TPR would be entitled to the
23 interpleader funds".

24 Now, what's significant about this ruling is, this was
25 after the Delaware Supreme Court ruled how it did, because

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1 they're taking the position that once the Delaware Supreme
2 Court didn't affirm under the escrow agreement all bets are
3 off. Section 2.B.3 which talks about -- 2.B.2 -- which talks
4 about affirming, that doesn't count any more. But that's not
5 what your Honor ruled. What your Honor said is that any court
6 of competent jurisdiction can decide the beneficial ownership
7 and that will automatically determine who gets the shares. And
8 your Honor said that the New York courts are well equipped to
9 do so and the Delaware courts are well equipped to do so and
10 probably New York is better, but you're going to leave that to
11 the parties to figure it out. And you sent us all on our way.

12 So what happened next? Well, TPR didn't file any
13 suits. But this being it the Gengers, TPR didn't get sued just
14 in New York and didn't get sued just in Delaware. We got sued
15 in both. And I just heard that no court has made a finding of
16 beneficial ownership of the shares. Absolutely incorrect.
17 Both courts have made a finding of beneficial ownership of the
18 shares. Both are conclusive and final.

19 So let me just very briefly go through what happened
20 after your Honor made that ruling. Your Honor knows some of it
21 from one of the prior skirmishes, but let me take you all the
22 way through it just again.

23 First, there was only one claim about beneficial
24 ownership of the shares -- that's what we're talking about
25 here -- in the 2010 action.

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1 It's important to note, by the way, that the 2010
2 action that they're asking you to stay for, that was filed
3 before the escrow agreement was signed. So Orly understood and
4 contracted that the determination of beneficial ownership of
5 the shares wasn't going to be determined by the 2010 action; it
6 was going to be determined by Delaware. The 2010 action
7 already existed when she signed that agreement.

8 THE COURT: Well, you were down in Delaware, right?

9 DELLAPORTAS: I was, your Honor.

10 THE COURT: Didn't the chancellor down there,
11 Chancellor Strine, didn't he tell you that once the stipulation
12 was signed in Delaware, that the place to go was New York
13 Supreme, not -- he didn't say anything about filing a new
14 action before me. Isn't that why the stipulation in Delaware

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15 reads, quote, a court in New York, close quote?

16 DELLAPORTAS: Chancellor Strine said a court in New
17 York. It did not say a state court in New York or a federal
18 court in New York.

19 THE COURT: He knows the difference between a federal
20 court and a state court. Come on. He referred twice in that
21 proceeding specifically to me. And I read the minutes. I read
22 them yesterday and I read them again this morning. And both
23 place -- he talks about federal court and me, and he even
24 mentions something about the Constitution. If he meant federal
25 court, he would have said federal court.

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1 DELLAPORTAS: He expressed the concern that perhaps
2 there wouldn't be diversity jurisdiction. There is. And even
3 if he meant state court, Chancellor Strine is a great judge but
4 he doesn't have the authority to tell us which court to go to.
5 He kicked us all out of his court and after that --

6 THE COURT: He certainly did.

7 DELLAPORTAS: After that it's up to us.

8 THE COURT: He didn't express a great deal of pleasure
9 with any of you that I read.

10 DELLAPORTAS: Yes. And I think he's had his fill of
11 the Gengers, as have many judges. But before he did, he
12 entered a final order saying that beneficial ownership of the
13 shares was TPR's and TPR properly sold them.

14 Let's compare what your Honor ruled versus what he
15 then ruled. Your Honor said, "If the 2004 transfer of shares
16 to Arie Genger to the Orly trust is found to be invalid, then
17 TPR has the right to sell the shares to the Trump Group and TPR
18 would be entitled to the interpleader funds."

19 Now we did to what Chancellor Strine ruled. He ruled
20 that the shares were invalid. He used the term "void" but it's
21 the same thing. The transfers were void and the stock reverted
22 to TPR and the Trump Group had the right to buy all of the
23 improperly transferred Trans-Resources stock from TPR. And
24 then he said, it's now -- that transaction is complete. These
25 are paragraphs 1 and 26 his ruling.

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1 So his ruling gave exactly the ruling that your Honor
2 said we would need to obtain in order to satisfy the
3 interpleader the last time around.

4 Now, he didn't rule that we're entitled to the money.
5 He didn't want to rule that. He said go to New York to figure
6 out who's entitled to the money. But that doesn't stop the res
7 judicata or collateral estoppel effect on which the Court
8 ruled, on which your Honor ruled.

9 Just to be clear, we don't say Chancellor Strine said
10 we're entitled to the money. We say this Court said under
11 express conditions we would be entitled to the money.

12 THE COURT: You make a big point here, as I understand
13 it, as I read this, that Orly filed a state court action last
14 December and that she never claimed the funds in the original
15 Supreme Court action. Right? You make a point about that,
16 don't you?

17 DELLAPORTAS: She never claimed ownership of them.
18 what she claimed was that by our obtaining them --

19 THE COURT: Isn't that what the unjust enrichment

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20 claim is?

21 DELLAPORTAS: Your Honor said exactly the opposite.
22 with respect to Arie's shares, which is the same shares, when
23 this was before your Honor last time -- and this is on page 24
24 of your Honor's decision -- your Honor noted the difference.
25 You said, "well" -- and this is about Arie but it's the same
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1 shares -- "well, Arie asserts a beneficial ownership in the
2 underlying Trans-Resources shares. In no case does he have a
3 claim against the interpleaded funds themselves. Instead,
4 Arie's numerous counterclaims seek money damages for a breach
5 of fiduciary duties that are ancillary to and beyond the scope
6 of the Skadden interpleader."
7 That is the same thing here. They have money damages
8 claims. Your Honor asked exactly the right question: If they
9 give us the money, do they still have money damages claims?
10 Absolutely. Absolutely they still have money damages claims.
11 And maybe they'll win and maybe they will be worth more than
12 10.3, maybe they will be less than 10.3. But what's been
13 noted, that the first element of a claim for unjust enrichment
14 is that we were enriched. And so far we're being sued for
15 unjust enrichment and we haven't been enriched. So our point
16 is, at least allow us to be enriched. And then we can have a
17 trial over whether it was just or unjust.

18 THE COURT: Let me ask you one more question and I'll
19 wrap it up. Are you saving time for rebuttal too?

20 DELLAPORTAS: I will save a couple minutes. But I
21 have a couple of great points, your Honor.

22 THE COURT: Let me ask you this. You're arguing that
23 the Delaware stipulation satisfies section 2.8.2 of the escrow
24 agreement, right?

25 DELLAPORTAS: It does, your Honor.
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1 THE COURT: OK. Well, I don't know whether that's
2 technically true. Aren't you really making a different
3 argument? Aren't you really making an argument that there's a
4 drafting error here and that it would be consistent with the
5 spirit of the agreement, not with the verbiage? Isn't that
6 what you're preliminarily saying?

7 DELLAPORTAS: We're arguing two things, your Honor.
8 We make both points in our papers. Number one is that this has
9 been litigated. And once it's been litigated it doesn't matter
10 that somebody comes up with a clever argument after the fact.
11 They had an obligation. If they thought it could only be the
12 Delaware Supreme Court, they had to speak up again, because if
13 that were the case, then we should have been before your Honor
14 two years ago and had this resolved. But they said no. They
15 took the opposite position. They said it's impossible to be
16 vexatious because everybody agrees how this thing should be
17 read. Now they are saying, never mind, it actually should be
18 read some other way.

19 In the courts we only get to litigate things once,
20 your Honor. And whether it's res judicata or collateral
21 estoppel --

22 THE COURT: Not in this case.

23 DELLAPORTAS: Well, there's a first time for
24 everything, your Honor. And that's how it was interpreted by

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25 the Court. And it was absolutely a necessary finding to the
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1 decision, but it's on what the Court pinned its finding of lack
2 of diversity. That's where lack of subject matter jurisdiction
3 came from. If they had said then that, oh, you can only have
4 the Delaware Supreme Court -- the Delaware Supreme Court had
5 already dismissed the case at that point. But your Honor
6 said -- and they agreed, they urged this result -- that any
7 court of competent jurisdiction can decide it.
8 So now we haven't had one, we've had two courts, your
9 Honor, who have ruled on beneficial ownership. And that's, I
10 think, something we're missing here.
11 Justice Jaffe, on January 3rd, 2012, issued her
12 decision where they only had one count of beneficial ownership.
13 If you look at the third amended supplemental complaint, Count
14 One is their count seeking beneficial ownership of the shares,
15 which is what we're talking about here. And in it they sought
16 the following relief: The 2004 transfer should be undone. All
17 the shares should come back to TPR. TPR should give them to
18 TPR2, a new company. Arie should be put in control of TPR2.
19 And then 50 other ridiculous events.
20 This goes before Justice Jaffe, and Justice Jaffe
21 dismisses it. Justice Jaffe rules, quote, Arie seeks to undo
22 the Delaware court's adverse findings against him and the Trump
23 Group's right to buy the invalidly transferred shares
24 notwithstanding the fact that they were transferred as a result
25 of his misrepresentation in the divorce. In any event, any
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1 equitable or contractual right in favor of Arie to reform the
2 diverse stipulation does not override the preexisting
3 contractual right of the Trump Group to purchase the invalidly
4 transferred shares." So she threw out their only claims of
5 beneficial ownership.
6 It goes up on appeal, your Honor -- and your Honor
7 asked before it. It doesn't go up on appeal on that issue.
8 I'd like to read to you, because this is very important -- and
9 this happened after the last time we were here before your
10 Honor. Last time your Honor said the beneficial ownership
11 claim is on life support or almost dead but not quite dead.
12 Since your Honor made that ruling, both Arie and Orly have
13 pulled the plug on that. And so this is from her suit, this is
14 from her brief. She says, "In June 2013, Orly and Arie entered
15 into a settlement agreement with the Trump Group that resolved
16 all issues between them in this case. By this settlement, Orly
17 settled her individual claims and, as a result, is no longer
18 seeking beneficial ownership of the Orly Trust GRI shares."
19 Now, she says she still wants the money. Good for
20 her. But the shares, that's no longer pending in any court.
21 It was conclusively decided by Justice Jaffe. It was
22 conclusively decided by Chancellor Strine.
23 Now, Chancellor Strine read a decision. He thinks
24 she's got -- Orly's got a good unjust enrichment claim. Maybe
25 he'll come and testify for her. I don't know. But that's not
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1 what we're here for today. We're not here on Orly's money
2 damages claims. Your Honor said time and again, this Court is
3 not going to hear money damages claims again. Those are in the
4 state court for better, for worse. We respect that decision.
5 We're not seeking to challenge it. All we're seeking to do is
6 implement the very strict ruling of this Court on June 12th
7 that if we satisfied certain conditions, that we would be
8 entitled to the funds. We have satisfied those conditions.

9 THE COURT: OK. You saved time for rebuttal.

10 DELLAPORTAS: Very briefly, your Honor?

11 THE COURT: Very briefly, if you're going to do
12 rebuttal.

13 DELLAPORTAS: You asked if we proceed under 2.B.2.
14 And we do proceed under 2.B.2. We don't think it's a drafting
15 error. We think that, inconsistent with the case we cited in
16 our brief, that it needs to be read that every provision of an
17 escrow agreement needs to be read to fulfill the overall
18 purpose. And the overall purpose of this agreement was, if we
19 owned the shares and we sold the shares, to give us our
20 proceeds from selling the shares. It's not complicated.

21 We also proceed under 2.B.5. We made a written
22 request under 2.B.5. We said, why don't we all just agree, why
23 don't we all not be Gengers for once in our life and agree just
24 to release this, subject to all your money damages claims. And
25 we made that on November 18th. That's Exhibit C to our papers.

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1 They responded, no, we object. That's Exhibit D to their
2 papers.

3 When you get a written letter --

4 THE COURT: All right. Come on.

5 DELLAPORTAS: Yes. When you get a written request and
6 you have an objection --

7 THE COURT: Thank you. Save your time for rebuttal.

8 DELLAPORTAS: -- the only way for the escrow agent to
9 release the funds is by order of the court. So at this point
10 we need an order of some court, and we believe this court is
11 the correct court. Thank you, your Honor.

12 THE COURT: Thank you.

13 All right. Now, who is going to argue here on behalf
14 of Pedowitz & Meister?

15 MR. MEISTER: I would, your Honor, but I think it may
16 make sense that Ms. Bachman argue briefly on behalf of
17 Ms. Genger.

18 THE COURT: All right.

19 MS. BACHMAN: Good afternoon, your Honor.

20 THE COURT: Good afternoon.

21 MS. BACHMAN: I do not believe I'll need any time for
22 rebuttal because I'll be very brief.

23 As I understand it, Ms. Genger's crossclaim,
24 counterclaim here was pursuant to the settlement agreement that
25 the parties have made that the Orly Trust was entitled to the

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1 proceeds, which are currently being held in escrow. As this
2 Court is aware from the numerous papers that have been filed,
3 Justice Jaffe tells us that settlement agreement was either
4 void or voidable, and subsequently on appeal to the First
5 Department, the First Department affirmed that decision.

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6 Accordingly, it seems that the logic behind
7 Ms. Genger's claims is now in jeopardy and therefore we don't
8 object if this Court would direct that the escrow be given to
9 TPR. TPR has represented to the Court and there is an oral
10 understanding, to my knowledge, that if on further appeal of
11 the First Department decision the settlement agreement is
12 deemed to be valid, then TPR will act in accordance with the
13 settlement agreement and return the money to the trust.

14 THE COURT: Let me ask you this question. You
15 represent Dalia now, right?

16 MS. BACHMAN: That is correct, your Honor.

17 THE COURT: Personally, right?

18 MS. BACHMAN: As the trust -- her role here, I
19 believe, is as the trustee of the trust.

20 THE COURT: Well, how can she do both? She is the
21 trustee for the Orly Trust. Right?

22 MS. BACHMAN: That is correct.

23 THE COURT: And as I read Chancellor Strine's -- now
24 he's chief justice down there, chief judge. As I read his
25 remarks, he kept suggesting that she no longer should be

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1 trustee, didn't he? Did you read that?

2 MS. BACHMAN: I am familiar with that. To my
3 knowledge, your Honor, the surrogate court in New York has, at
4 least to date, deemed that Dalia is an appropriate
5 representative of the trust.

6 THE COURT: Aren't she and Arie estranged?

7 MS. BACHMAN: They are clearly at odds, your Honor.
8 But that does not -- that's not, if you will -- in the
9 structure that we have of trusts, I believe that a beneficiary
10 does not necessarily have the discretion to choose the trustee.
11 It's the trust document itself that determines who should be
12 the trustee and how that trustee is appointed. And until the
13 surrogates court rules otherwise, I believe that she is the
14 appropriate representative of the trust.

15 THE COURT: All right.

16 Anything else you want to say?

17 MS. BACHMAN: That's all, your Honor.

18 THE COURT: Thank you.

19 MS. BACHMAN: Thank you.

20 THE COURT: I'll hear from you, Mr. Meister, briefly.

21 MR. MEISTER: Your Honor, Robert Meister for Pedowitz
22 & Meister, pro se.

23 I also will be brief. I don't think I will need any
24 time for rebuttal.

25 First, as trustee -- escrow agent, I should say -- we

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1 received multiple claims for the same proceeds. We didn't
2 commence an interpleader action. Rather, we filed an answer
3 using rule interpleader, defense of interpleader.

4 I heard my colleague, Mr. Griver, say that the escrow
5 agreement says we can't do that. But I've read the escrow
6 agreement many times. In fact, I blush to say I drafted it.
7 And it doesn't say that. It says that if there are conflicting
8 claims, the escrow agent can, among other things, do nothing.
9 It also says other things that it may do. It doesn't say
10 anything that it can't do, in terms of the interpleader.

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11 So while the escrow agent could have started an
12 interpleader seeking arbitration, we didn't. We didn't start
13 any interpleader. And I don't believe that even if the
14 agreement purported to prevent the escrow agent from taking
15 advantage of federal law, that that would be lawful. But we
16 don't have to worry about that. It didn't.

17 Why do we like interpleader as opposed to your Honor
18 just saying, here's judgment, here's the proceeds where the
19 proceeds go, the way any normal case would be decided? The
20 interpleader gives the parties who have -- whoever the Court
21 determines has the right to the money -- gives them the same
22 thing. It gives the interpleader, as escrow agent, a
23 discharge. And since my colleague, Mr. Griver, has come up
24 with numerous creative theories in the course of these
25 litigations, in particular his December action, which seeks

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1 damages against the escrow agent for not turning all the funds
2 over to Orly, we think that discharge by this Court would
3 surely be something good to have, something we're entitled to
4 as a matter of law.

5 The only other thing I would say to the Court is, I
6 did check the account. The current balance in the escrow is
7 \$10,376,163.20. That's going to change on April 30. So I take
8 it that when the Court decides this, if the Court decides that
9 the money should go to someone or the other --

10 THE COURT: It can be tomorrow.

11 MR. MEISTER: If it's tomorrow --

12 THE COURT: Tomorrow's April 30th.

13 MR. MEISTER: It is. It is. The way Chase credits
14 things, I send out a notice to all the parties every month.
15 The credit comes in on April 30th. Not in a huge amount of
16 money. It's now earning 0.15 percent interest.

17 THE COURT: Yes. I'm aware of the bank statements.

18 MR. MEISTER: The only thing that I would say apropos
19 of the claim against the escrow agent is that there was an
20 objection to the Orly claim. It's attached to my papers. The
21 notice went out. Mr. Griver says he doesn't remember receiving
22 it. His client doesn't open her mail, so it's not a problem
23 there. But the point is, the escrow agreement does not require
24 the escrow agent to send out notices of objection. It does
25 require notices of claims. There's no argument that notices of

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1 claims weren't sent out. So I don't see how the escrow agent
2 can be faulted in that case.

3 And with that I'll just remind your Honor of the old
4 Russian proverb, which I should have borne in mind when
5 agreeing to become here, as escrow agent, that no good deed
6 remains unpunished.

7 THE COURT: Thank you.

8 All right. So first we're going to have Mr. Griver's
9 rebuttal. Go ahead.

10 MR. GRIVER: Thank you, you, your Honor. As
11 demonstrated, TPR's plea is that you allow it to ignore the
12 escrow agreement because it's as if they had met its
13 requirements. Orly gave up fundamental rights to reach the
14 specific language of the escrow agreement. They admit they
15 don't need it.

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16 They say instead that beneficial ownership has been
17 decided. Well, look at what the New York court said on May 29,
18 2013. And this was at page 3 of our memo. It says, "Nor can
19 TPR's unilateral declaration of ownership be reconciled with
20 the undisputed fact that the issues of ultimate beneficial
21 ownership in such shares and the related proceeds have not yet
22 been judicially determined by a court of competent
23 jurisdiction." Look at what you said just one week before they
24 came in and said, oh, it's been determined. You said,
25 "Therefore, it is inaccurate for TPR to suggest that the issue

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1 of beneficial ownership is conclusively resolved."

2 what Mr. Dellaportas does is, he mixes and matches the
3 arguments of Arie Genger and Orly Genger. I am in front of you
4 have representing Orly Genger and the Orly proceeds and the
5 Orly shares. Arie Genger is completely and entirely different.
6 Look at what your Honor said about what Orly was seeking to do.
7 "Orly moves to dismiss the federal action, to which they are
8 party, and asks the Court to stay the Delaware court chancery
9 action so the merits of their claim can proceed in New York
10 Supreme Court." That's what Orly asked for. That's on page 15
11 of your decision dated June 14, 2012. Orly didn't say, I don't
12 care where it's being decided. She said it should be in front
13 of the New York State court.

14 And your Honor went on to say that the decision on
15 beneficial ownership does not void or amend the escrow
16 agreement. You have said that the proceeds will be provided
17 pursuant to the escrow agreement that all of the parties
18 contracted to.

19 As far as the Delaware stipulation is concerned, your
20 Honor, which, Orly has no part in that proceeding or in the
21 stipulation, paragraph 1 just references -- it said "in an
22 action styled TR Investments, LLC, the Court found that" -- it
23 isn't making new findings. It is just memorializing what
24 happened before. It does not go on to say, but those findings
25 as to the Orly Trust and the Orly Trust shares and the Orly

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1 proceeds have been voided by the Delaware Supreme Court --
2 which is exactly what happened.

3 Paragraph 2 does not say -- and Mr. Dellaportas said
4 this but it's not true. It does not say TPR had beneficial
5 ownership. All paragraph 2 says is that the Trump Group owns
6 those shares. It talks about the buyer. It does not talk
7 about the seller.

8 In paragraph 3, Dalia and TPR get together and try and
9 amend the escrow agreement to say, well, you can go to a court
10 of competent jurisdiction. But paragraph 9 of the escrow
11 agreement, in two places, says everybody has to agree. And
12 they keep forgetting about Orly and they keep forgetting about
13 the fact that Orly is a party to this.

14 And finally, your Honor, it can't be a decision of
15 TPR's right to the sale of proceeds because --

16 THE COURT: Hold it. Slowly. Slowly.

17 MR. GRIVER: OK. It cannot be, your Honor, a decision
18 of TPR's right to the sale of proceeds, because it specifically
19 memorializes the fact that those claims were dismissed prior to
20 this stipulation. That was language that acknowledged the fact

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21 TPR chose to dismiss its claims and as a result the stipulation
22 has nothing do with its rights to those proceeds.

23 Your Honor, I think that they're ignoring Orly at
24 every stage of the proceeding and ignoring the agreement that
25 they reached with Orly in the escrow agreement. It runs

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1 through this entire case. The escrow agent, right, had a clear
2 conflict of interest. We raised it. We've raised it in the
3 New York State action. The waiver that he says he obtained, he
4 never obtained it from the beneficiary of the trust. He went
5 to his client Dalia and said, is it OK if I represent you and
6 somebody else. But he never went and say, hey, how can I do
7 this. For Dalia to stand up as trustee and say, oh, give it to
8 TPR, is exactly why we have been trying through Dalia for years
9 now, why we objected to appointment in the first place, and why
10 Dalia was recently found to have violated her fiduciary duties
11 in one of the secret agreements that she entered into with TPR.

12 THE COURT: You said "finally" about five minutes ago.

13 MR. GRIVER: Well, your Honor, then I'm pleased to say
14 that I am finally done.

15 DELLAPORTAS: One minute?

16 THE COURT: Yes. There is a little time. Go ahead.

17 DELLAPORTAS: I just wanted to respond to a couple
18 things that were said. It was alleged that we've mixed Arie
19 and Orly. Exhibit N to our papers, page 26, is Orly's
20 appellate brief, which was filed with the Appellate Division
21 after your Honor ruled that the beneficial ownership of the
22 shares was on life support but not yet dead. And then Orly
23 says she settled with the Trumps and, quote, Orly is no longer
24 seeking beneficial ownership of the Orly Trust PRI shares.

25 Beneficial ownership is over, your Honor, of the
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1 shares. Now they say, now we want the money. Great. But
2 that's not what the ruling is, your Honor.

3 They also said that Chancellor Strine's ruling,
4 paragraph 2, speaks only as the buyer and not the seller.
5 Absolutely incorrect. What Chancellor Strine ruled in
6 paragraph 2 was, "The Trump Group, having closed on the
7 purchase of the so-called Orly Trust shares" -- here's the
8 important part -- "pursuant to and under the terms of the side
9 letter agreement between TPR and the Trump Group." That's the
10 ruling. The side letter agreement is in the record. That's a
11 contract whereby we sold those shares to them. Exactly the
12 ruling your Honor said we needed to get in order to get our
13 proceeds.

14 We've gotten the ruling that the Court asked us to
15 get. We would now like our proceeds. Thank you very much,
16 your Honor.

17 THE COURT: Thank you. All right. Decision is
18 reserved. Thanks very much.

19 MR. GRIVER: Thank you, your Honor.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ARIE GENDER and ORLY GENDER, in her :
individual capacity and on behalf of :
THE ORLY GENDER 1993 TRUST, : Index No. 651089/2010
(Jaffe, B. JSC)

Plaintiffs,

-against-

SAGI GENDER, TPR INVESTMENT :
ASSOCIATES, INC., DALIA GENDER, THE :
SAGI GENDER 1993 TRUST, ROCHELLE :
FANG, individually and as trustee of THE SAGI :
GENDER 1993 TRUST, GLENCLOVA :
INVESTMENT COMPANY, TR INVESTORS, :
LLC, NEW TR EQUITY I, LLC, NEW TR :
EQUITY II, LLC, JULES TRUMP, EDDIE :
TRUMP AND MARK HIRSCH, :

Defendants.

-----X
SAGI GENDER, individually and as assignee of :
THE SAGI GENDER 1993 TRUST, and TPR :
INVESTMENT ASSOCIATES, INC. :

Cross-Claimants, Counterclaimants, and :
Third-Party Claimants, :

-against-

ARIE GENDER, ORLY GENDER, :
GLENCLOVA INVESTMENT COMPANY, :
TR INVESTORS, LLC, NEW TR EQUITY I, LLC, :
NEW TR EQUITY II, LLC, JULES TRUMP, :
EDDIE TRUMP, MARK HIRSCH, :
TRANS-RESOURCES, INC., WILLIAM :
DOWD, and THE ORLY GENDER 1993 TRUST, :

Cross-Claim, Counterclaim and/or :
Third-Party Defendants. :
-----X

MEMORANDUM OF LAW IN SUPPORT
OF TRUSTEE DALIA GENDER'S MOTION
TO SUBSTITUTE FOR PLAINTIFF ORLY GENDER
ON HER DERIVATIVE CLAIMS AGAINST THE TRUMP GROUP
AND FOR AN ORDER DIRECTING
SETTLEMENT PROCEEDS TO
BE PAID INTO COURT

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Preliminary Statement

Dalia Genger, as trustee for the Orly Trust, moves to be substituted in for derivative plaintiff Orly Genger on the claims Orly brought on behalf of the Orly Trust against the Trump Group since “Orly no longer represents the Orly Trust as to the Trump Group”.

As the substituted plaintiff, Dalia Genger, as trustee for the Orly Trust, respectfully requests an order pursuant to CPLR 2701 directing that the settlement fund from the Trump Group be paid into court since the Court “cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust.” Order of the Court, Filed May 13, 2014, Doc. 925 at 4 (emphasis added).

Statement of Facts

Dalia Genger is the trustee of the Orly Genger 1993 Trust (“Orly Trust”). In this action, Orly Genger (“Orly”) instituted direct and derivative claims on behalf of the Orly Trust against various defendants, including the so-called Trump Group.

Orly settled with the Trump Group defendants. Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Affirmation of Judith Bachman, dated August 11, 2014 (“Bachman Aff.’”).

“A material term of the agreement among the settling parties was the dismissal of *all* claims presently pending against one another, in whatever capacity they were brought. [If the settlement stipulation was drafted so as to] have the effect of *not* dismissing Orly Genger's derivative claims against the Trump Group, contrary to the agreement of the settling parties. Excluding such claims from the claims that are to be dismissed is not what the Trump Group bargained and paid for in the settlement . . .” Letter to the Court from Thomas J. Allingham II, dated June 28, 2010, Doc. 728 at 2, attached as Exhibit 2 to the Bachman Aff. (emphasis added).

The Trump Group later reaffirmed this aspect of the settlement:

“[any suggestion] that the confidential settlement agreement *might* only dismiss Orly’s individual claims against the Trump Group, but not resolve the Orly Trust’s claims against the Trump Group and the TPR Group. (Opp’n Br. at 28) . . . is counterfactual. This Court has already held that certain of Orly’s claims in this action, including the remaining claims, are derivative in nature, and may be maintained by Orly on behalf of the Orly Genger 1993 Trust. *See Genger v. Genger*, 966 N.Y.S.2d 346, 2013 WL 221485, at *6 (N.Y. Sup. Ct. Jan. 3, 2013) (TABLE) (citing *Genger v. Genger*, No. 109749/2009 (N.Y. Sup. Ct. June 28, 2010)). In settling the claims among them, the Trump Group, Trans-Resources, Orly and Arie agreed to the dismissal of all claims presently pending against one another. This agreement is memorialized in the Second Amended Stipulation of Discontinuance.

Reply Memorandum of Law of Trump Group, Filed April 17, 2014, Doc. 888 at 22-23, attached as Exhibit 3 to the Bachman Aff.

Evidencing this intent, in paragraph 8 of her settlement agreement, Orly agreed to “cooperate” and “cause” the Orly Trust to release any and all claims against the Trump Group.” Order of the Court, Filed May 13, 2014, Doc. 925 at 4, attached as Exhibit 4 to the Bachman Aff.

Pursuant to that duty, Orly not only settled all her claims in this case; she also caused the Orly Trust to release claims against the Trump Group in a parallel Delaware case. Specifically, at the time of the Trump Group settlement, the Orly Trust was maintaining a proceeding in Delaware Chancery Court. Following her Trump Group settlement, Orly’s counsel twice wrote to Chancellor Strine urging “the dismissal of the last remaining Genger related case in Delaware” and “acknowledg[ing] individually and in her capacity as the beneficiary of her trust that the Trump Group are the record and beneficial owners of the TRI shares which had been distributed to the Orly Trust.” Exhibit M, Filed June 2, 2014, Doc. 1034, attached as Exhibit 5 to the Bachman Aff. Satisfied that Orly no longer wanted the Orly Trust to pursue its claims, the

Chancery Court dismissed the Orly Trust's claims in that case with prejudice. Exhibit N, Filed June 2, 2014, Doc. 1034, attached as Exhibit 6 to the Bachman Aff.

Notwithstanding the provisions of her own Trump Group settlement agreement and her representations to the Delaware Chancery Court, Orly told this Court that her Trump Group settlement "only dismisses Orly's individual claims against the Trump Group, but does not resolve or dismiss any claims of the Orly Trust against the Trump Group". Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Bachman Aff. Moreover, Orly stated that she "no longer represents the Orly Trust as to the Trump Group (while allowing Dalia Genger to pick up the cudgel if she so chooses) . . ." Id. (emphasis added).

In light of these conflicting statements, this Court "invite[d] the parties to the settlement agreement to set forth the claims given up by Orly in her individual and beneficial capacities, and to explain why any derivative claims advanced in the complaint are not released in the agreement." Order of the Court, Filed May 13, 2014, Doc. 925 at 4, attached as Exhibit 4 to the Bachman Aff.

Conveniently for them, none of the parties to the settlement agreement complied with the Court's request to "set forth the claims given up by Orly in her individual and beneficial capacities, and to explain why any derivative claims advanced in the complaint are not released in the agreement." Id. In fact, Orly's counsel explicitly refused to comply with that request. Email Correspondence dated May 26, 2014, attached as Exhibit 7 to the Bachman Aff.

Accordingly, this Court held that "[u]nless and until the issue of [the status of the] derivative claims is resolved, I cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust . . ." Order of the Court, Filed May 13, 2014, Doc. 925 at 4 (emphasis added), attached as Exhibit 4 to the Bachman Aff.

Even in the presence of this conveniently self-manufactured uncertainty by Orly as to whom the settlement proceeds belong to, *i.e.*, Orly or the Orly Trust, counsel for both Orly and the Trump Group have represented in Court that cash payments were made and will be made only to Orly. Exhibit N, Filed June 2, 2014, Doc. 1034, attached as Exhibit 6 to the Bachman Aff. (“Orly did sign the settlement agreement, and that’s a settlement in which real money is changing hands and will continue to change hands.”). Upon information and belief, Orly used the proceeds to pay her own debts, and those of her father, acts which are explicitly prohibited by the Orly Trust agreement.

To protect the interests of the Orly Trust, Dalia Genger, as trustee of the Orly Trust, now moves this Court for an order of substitution for derivative plaintiff Orly Genger on the Orly Trust Trump Group claims and for an order directing that the settlement fund with the Trump Group be deposited into Court.

Point I

Substitution of Derivative Plaintiff Orly Genger
Is Necessary Because She No Longer
Represents the Orly Trust on the
Trump Group Claims And She Has Suggested the Trustee
“Pick Up the Cudgel” on those Claims

Pursuant to CPLR 1021, “a motion for substitution may be made by the successors or representatives of a party or by any party.”

Such substitution is appropriate, and indeed necessary, when a derivative plaintiff is no longer an appropriate representative plaintiff. James v. Bernhard, 106 A.D.3d 435, 965 N.Y.S.2d 56 (1st Dep’t 2013).

In James, the Court found that the substitution of independent directors in place of a club member derivative plaintiff was necessary where the derivative plaintiff club member no longer represented the club's interests.

Here too, substitution for derivative plaintiff Orly Genger is necessary because Orly Genger no longer represents the Orly Trust on those claims, and indeed she has suggested that the Trustee should "pick up the cudgel". Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Bachman Aff. Orly Genger, the party to be substituted, has expressly acknowledged that such substitution is appropriate: "Orly no longer represents the Orly Trust as to the Trump Group (while allowing Dalia Genger to pick up the cudgel if she so chooses) . . .". Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Bachman Aff. (emphasis added).

Since, by her own admission and, in fact urging, Orly has said that Dalia Genger has standing to make this motion and "pick up the cudgel" on the Orly Trust Trump Claims, Dalia Genger, as Trustee, must be substituted for Orly as to the Orly Trust Trump Group claims. Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Bachman Aff. This substitution will, as described more fully below, protect the Orly Trust's interest in the settlement with the Trump Group.

Point II

The Proceeds of the Settlement Should be Paid into Court To Protect the Fund

A court may direct that funds should be paid into court if

1. a party has such property in his possession, custody or control as trustee for another party or where it belongs or is due to another party; or

2. a party has such property in his possession, custody or control and it belongs or is due to another party, where special circumstances make it desirable that payment or delivery to such other party should be withheld;

3. the ownership of such property will depend on the outcome of a pending action and no party is willing to accept possession or custody of it during the pendency of the action.

CPLR 2701. See, e.g., Conforti v. Goradia, 234 A.D.2d 237, 651 N.Y.S.2d 506 (1st Dep't 1996).

Where two parties dispute entitlement to a settlement fund of money, a court should direct payment of the fund into court under CPLR 2701, rather than allow payment to one party, to protect that fund and the mutual interests of the parties. Lade v. Levitt, 33 A.D.2d 956, 306 N.Y.S.2d 704 (3d Dep't 1970); Rice v. DiNapoli, 23 Misc.3d 1128(A), 889 N.Y.S.2d 507 (Table) (Sup. Ct. Albany County 2009); Werner v. Werner, 70 Misc.2d 1051, 334 N.Y.S.2d 966 (Sup. Ct. Albany County 1982)

In the instant action, this Court has held “[u]nless and until the issue of [the status of the] derivative claims is resolved, I cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust” Order of the Court, Field May 13, 2014, Doc. 925 at 4 (emphasis added), attached as Exhibit 4 to the Bachman Aff.

This difficulty flows from the fact that any settlement of Orly's derivative claims on behalf of the Orly Trust belongs to the Orly Trust and not to Orly, individually. See Gusinsky v. Bailey, 21 Misc.3d 1107(A), 873 N.Y.S.2d 234 (Table) (Sup. Ct. N.Y. County 2008), rev'd on other grounds, 66 A.D.3d 614, 887 N.Y.S.2d 585 (1st Dep't 2008); Clarke v. Greenberg, 71 N.E.2d 443, 296 N.Y. 146 (1947). Any payment of the settlement funds to Orly or any other person which belong to the Orly Trust, is improper.

It appears that Orly has deliberately manufactured confusion as to whether or not she settled the Orly Trust derivative claims against the Trump Group so that she can take all of the settlement funds for herself rather than have them paid to the Orly Trust. Counsel for both Orly and the Trump Group have represented in Court that cash payments were made and will be made only to Orly. Exhibit N, Filed June 2, 2014, Doc. 1034, attached as Exhibit 6 to the Bachman Aff. (“Orly did sign the settlement agreement, and that’s a settlement in which real money is changing hands and will continue to change hands.”)

Such payment only to Orly, and not the Orly Trust, is improper, since there is compelling evidence that some, if not all, of the settlement funds belong to the Orly Trust as the result of the settlement of derivative claims against the Trump Group.

The Trump Group, one of the settling parties, believes the derivative Orly Trust claims have been settled: “A material term of the agreement among the settling parties was the dismissal of *all* claims presently pending against one another, in whatever capacity they were brought. [If the settlement stipulation was drafted so as to] have the effect of *not* dismissing Orly Genger’s derivative claims against the Trump Group, contrary to the agreement of the settling parties. Excluding such claims from the claims that are to be dismissed is not what the Trump Group bargained and paid for in the settlement . . .” Letter to the Court from Thomas J. Allingham II, dated June 28, 2010, Doc. 728 at 2, attached as Exhibit 2 to the Bachman Aff. (emphasis added). The Trump Group reaffirmed this aspect of the settlement:

[any suggestion] that the confidential settlement agreement *might* only dis-miss Orly’s individual claims against the Trump Group, but not resolve the Orly Trust’s claims against the Trump Group and the TPR Group. (Opp’n Br. at 28) . . . is counterfactual. This Court has already held that certain of Or-ly’s claims in this action, including the remaining claims, are derivative in nature, and may be maintained by Orly on behalf of the Orly Genger 1993 Trust. *See Genger v. Genger*, 966 N.Y.S.2d 346, 2013 WL 221485, at *6 (N.Y. Sup. Ct. Jan. 3, 2013) (TABLE) (citing *Genger v. Genger*, No. 109749/2009 (N.Y.

Sup. Ct. June 28, 2010)). In settling the claims among them, the Trump Group, Trans-Resources, Orly and Arie agreed to the dismissal of all claims presently pending against one another. This agreement is memorialized in the Second Amended Stipulation of Discontinuance.

Reply Memorandum of Law of Trump Group, Filed April 17, 2014, Doc. 888 at 22-23, attached as Exhibit 3 to the Bachman Aff.

Further, in paragraph 8 of her settlement agreement, Orly agreed to “cooperate” and “cause” the Orly Trust to release any and all claims against the Trump Group.” Order of the Court, Filed May 13, 2014, Doc. 925 at 4, attached as Exhibit 4 to the Bachman Aff. Pursuant to that duty, Orly not only settled all her claims in this case; she also caused the Orly Trust to release claims against the Trump Group in a parallel Delaware case, when she twice had her counsel urge (and later obtain) for “the dismissal of the last remaining Genger related case in Delaware” and “acknowledg[ing] individually and in her capacity as the beneficiary of her trust that the Trump Group are the record and beneficial owners of the TRI shares which had been distributed to the Orly Trust.” Exhibit M, Filed June 2, 2014, Doc. 1034, attached as Exhibit 5 to the Bachman Aff.

All of these facts compel the conclusion that Orly’s Trump Group settlement in this action resulted in the dismissal of both her individual and derivative claims, and that some, if not all, of the settlement fund belongs to the Orly Trust.

Yet, in self-manufactured confusion, notwithstanding the provisions of her own Trump Group settlement agreement and her representations to the Delaware Chancery Court, Orly told this Court that she “only dismisses Orly’s individual claims against the Trump Group, but does not resolve or dismiss any claims of the Orly Trust against the Trump Group”. Memorandum of Law of Orly Genger, Doc. 775 at 2, attached as Exhibit 1 to the Bachman Aff.

In light of the conflicting statements, this Court “invite[d] the parties to the settlement agreement to set forth the claims given up by Orly in her individual and beneficial capacities, and to explain why any derivative claims advanced in the complaint are not released in the agreement.” Order of the Court, Filed May 13, 2014, Doc. 925 at 4, attached as Exhibit 4 to the Bachman Aff. Conveniently for them, none of the parties to the settlement agreement complied with the Court’s request. Email Correspondence dated May 26, 2014, attached as Exhibit 7 to the Bachman Aff.

With these efforts, Orly succeeded in clouding the question of to whom the settlement proceeds belong: the Court “cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust . . .”.

Such self-manufactured confusion, though, is the very reason why the settlement proceeds must be paid into Court¹ - - to protect that fund and the mutual interest of the parties. Lade v. Levitt, 33 A.D.2d 956, 306 N.Y.S.2d 704 (3d Dep’t 1970); Rice v. DiNapoli, 23 Misc.3d 1128(A), 889 N.Y.S.2d 507 (Table) (Sup. Ct. Albany County 2009). Without such an order, the Orly Trust will be denied the opportunity to obtain any of the settlement proceeds paid as the result of settling claims belonging to the Orly Trust.

¹ Such an order must be made against all of the settling parties since it is undisclosed who is holding the settlement proceeds. If such payment has already been made, then the recipient stands in relation as a quasi trustee of the Orly Trust and/or is in possession of funds which belong to the Orly Trust. Bonham v Coe, 249 A.D. 428, 292 N.Y.S. 423 (4th Dep’t 1937); In re Martin's Estate, 96 N.Y.S.2d 842 (Surr. Ct. 1950); In re Roosevelt's Estate, 131 Misc. 800, 228 N.Y.S. 323 (Sup. Ct. 1928); Titus v. Empire Mink Corp., 17 N.Y.S.2d 909 (Sup. Ct. 1939); In re Carroll's Estate, 153 Misc. 649, 275 N.Y.S. 911 (Sur. Ct. 1934). This state of facts fits squarely within CPLR 2701.

Conclusion

Dalia Genger as Trustee must be substituted in for derivative plaintiff Orly Genger since “Orly no longer represents the Orly Trust as to the Trump Group” and the settlement proceeds must be paid into Court since the Court “cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust . . .”

Dated: New City, New York
August 11, 2014

_____/s/
Judith Lisa Bachman, Esq.
254 S. Main Street, Suite 306
New City, New York 10956
845-639-3210

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. BARBARA JAFFE

PART 12

Justice

ARIE GENDER and ORLY GENDER, in her individual capacity
and on behalf of THE ORLY GENDER 1993 TRUST,

Plaintiffs,

INDEX NO. 651089/2010

MOTION DATE

MOTION SEQ. NO. 42

CALENDAR NO.

- v -

INTERIM ORDER

SAGI GENDER, TPR INVESTMENT ASSOCIATES, INC.,
DALIA GENDER, *et al.*,

Defendants.

The following paper, numbered 1, was read on this motion.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Defendant Dalia Genger's motion for an order substituting her, as trustee, as plaintiff for Orly Genger's Trump Group claims, and for an order pursuant to CPLR 2701 directing that the Trump Group settlement fund be paid into Court is held in abeyance pending the Surrogate's Court's resolution of Orly Genger's petition to remove Dalia Genger as trustee of Orly Trust. (See *Genger v Genger*, interim order dated Apr. 1, 2015, index No. 113862/2010 [mot. seq. no. 2]).

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

DATED:

Dated:

5/7/15



J.S. BARBARA JAFFE
J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT: NEW YORK COUNTY

ARIE GENDER and ORLY GENDER, in her individual capacity and on behalf of the ORLY GENDER 1993 Trust,

Plaintiffs,

-against-

SAGI GENDER, TPR INVESTMENT ASSOCIATES, INC., DALIA GENDER, THE SAGI GENDER 1993 TRUST, ROCHELLE FANG, Individually and as Trustee of THE SAGI GENDER 1993 TRUST, GLENCLOVA INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP and MARK HIRSCH,

Defendants.

Index No. 651089/10

(Justice Barbara Jaffe)

Motion Seq. No. 42

SAGI GENDER, individually and as assignee of THE SAGI GENDER 1993 TRUST, and TPR INVESTMENT ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants, and Third-Party Claimants,

-against-

ARIE GENDER, ORLY GENDER, GLENCLOVA INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP, MARK HIRSCH, TRANS-RESOURCES, INC., and WILLIAM DOWD,

Cross-Claim, Counterclaim and/or Third-Party Defendants.

ORLY GENDER'S MEMORANDUM OF LAW IN OPPOSITION TO DALIA GENDER'S MOTION TO SUBSTITUTE HERSELF AS DERIVATIVE PLAINTIFF ON BEHALF OF THE ORLY GENDER 1993 TRUST AGAINST THE TRUMP GROUP AND FOR AN ORDER DIRECTING SETTLEMENT PROCEEDS TO BE PAID INTO COURT

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PRELIMINARY STATEMENT

Dalia Genger's ("Dalia") two motions are meritless and should be denied for a number of independent reasons.

First, under CPLR 1021, Dalia seeks to be substituted into this action as a derivative plaintiff to litigate any claims the Orly Genger 1993 Trust ("Orly Trust") may have in this action against the Trump Group. Dalia's "substitution motion" is moot because the Orly Trust has no existing claims against the Trump Group in this action. Even if such claims still existed, Dalia's substitution motion should be denied. CPLR 1021 exists to ensure that derivative plaintiffs with conflicts of interest may be removed, and conflict-free plaintiffs substituted. Here, Dalia's motion would achieve the opposite result because Dalia suffers from manifest conflicts of interest and improper bias. To allow her to substitute in would bring her conflicts of interest into this litigation, and place Orly Genger ("Orly") and the Orly Trust at risk. If Dalia truly believes the Orly Trust should "pick up the cudgel" against the Trump Group in this litigation, the proper course is for her to resign and let a new trustee who is conflict-free and acceptable to Orly advance those claims. See Statement of Facts and Argument, Point I.

Second, under CPLR 2701, Dalia seeks to have the proceeds from Orly's individual settlement with the Trump Group paid into Court, contending she has a right to seek that relief because Orly's settlement also settled Orly Trust claims. Dalia is wrong.

Dalia's request relies on ignoring the plain language of CPLR 2701 by omitting the critical phrase "which is the subject of this action" from her citation of the statute. CPLR 2701 only permits property "which is the subject of the action" to be paid into Court, yet the proceeds Dalia seeks to be placed into Court are not the subject of this action, or any other

action. For this reason and others, CPLR 2701 simply does not apply, and Dalia's effort to have the settlement proceeds placed with the Court should be denied. See Statement of Facts and Argument, Point II.

Moreover, the factual predicate of Dalia's "funds motion" is incorrect. The multi-party confidential settlement with the Trump Group did not settle Orly Trust claims. This is confirmed by, among other things, (i) the plain language of that Confidential Settlement Agreement; (ii) the plain language of the Second Amended Stipulation of Settlement, which did not dismiss any Orly Trust claims; and (iii) Dalia previously taking advantage of the fact that Orly Trust claims were not settled to continue her Dalia Delaware Action and enter into the Delaware Stipulation. See Statement of Facts and Argument Point II.

STATEMENT OF FACTS

A. Orly's New York Action On Behalf Of Herself And Her Orly Trust

On July 26, 2010, co-plaintiffs Orly and Arie Genger commenced this action. See Complaint [Docket No. 112]. Orly's operative complaint asserted both individual claims and claims on behalf of the Orly Trust. Orly is the sole non-contingent beneficiary of the Orly Trust. See Complaint ¶¶ 208-219. On January 2, 2013, the Court dismissed most of plaintiffs' claims against the Trump Group entities. See Jan 2, 2013 Amended Decision and Order at 25-27, 28-29 [Docket No. 285]. The Court allowed plaintiffs to proceed with claims for: (i) breach of fiduciary duty and aiding and abetting fiduciary duty against Sagi Genger ("Sagi"); and (ii) unjust enrichment against TPR Investment Associates, Inc. ("TPR") and against Sagi. Id.

The Court already has ruled that Orly may properly advance claims on her own

behalf and on behalf of the Orly Trust:

Plaintiff [Orly] argues, and none of the defendants dispute her, that as beneficiary of the Orly Genger 1993 Trust, she has a right to assert causes of action on behalf of the trust, citing *Velez v. Feinstein*, 87 AD2d 209 (1st Dept. 1982) (where trustee has failed to enforce a claim on behalf of the trust, the beneficiary may do so). She further argues that as the Orly Genger 1993 Trust is a limited partner of D&K Ltd. Partnership, she has the right to assert causes of action on behalf of the Partnership as against TPR Investment and the other defendants, citing among other cases, *CCG Assoc. I v. Riverside Assoc.*, 157 AD2d 435, 442 (1st Dept. 1990) (“[t]he right of a limited partner to bring an action on behalf of the partnership to enforce a right belonging to the partnership is beyond dispute”) (Pl Memo of Law [Doc. 9:4] p.1 n.1). Defendants’ arguments in opposition are not persuasive.

7/28/10 Decision and Order at 4 [Index No. 109749/2009; Docket No. 80]. That Orly has such standing is law of the case.

B. The Many Court Recognitions That Dalia Suffers From Irreparable Conflicts Of Interest And Has Often Sided With Sagi Genger Against Orly

On January 2, 2009, Surrogate Roth, denied Orly’s first application to remove Dalia as Trustee of the Orly Trust. Surrogate Roth states that she would give Dalia the opportunity to serve as Trustee and see what happens:

Indeed, it appears that Dalia (who states that she is ready and able to act as fiduciary) has yet to assume the duties of trustee in deference to her daughter’s position in this litigation. As a validly appointed trustee, she should be given the opportunity to do what she deems necessary to manage and protect the trust’s assets.

January 2, 2009 Surrogate Decision at 7 (emphasis added) [Index No. 109749/09; Docket No. 198]. Orly has renewed her application to remove Dalia, and it remains pending in Surrogate Court.

Since Surrogate Roth’s January 2, 2009 Decision, numerous courts have

examined Dalia's actual actions as Trustee, and recognized that Dalia suffers from conflicts of interest and is otherwise unfit to serve as Trustee. Thus, for example, the First Department held that Dalia suffered from conflicts of interest, and placed her personal interests ahead of the Orly Trust and Orly, benefiting herself at the expense of the Orly Trust:

In entering into the aforementioned October 2011 and March 2012 settlement agreements with TPR and D&K LP on behalf of the Orly Trust, of which she was sole trustee, Dalia had a conflict of interest. The new promissory notes executed by Dalia on behalf of the Orly Trust pursuant to the settlement agreements contained provisions that were plainly intended to entrench her as sole trustee of Orly Trust, notwithstanding the ongoing disputes and litigation between herself and plaintiff, the trust's beneficiary. Specifically, the replacement notes provided that Dalia's resignation or removal as trustee of Orly Trust, or the appointment of any additional trustee, would constitute an event of default rendering the notes immediately due and payable by Orly Trust. Further, the purported settlement of the derivative claims that plaintiff asserts on behalf of Orly Trust in this action – which was already pending at the time the settlement agreements were executed – required the court's approval, which was never sought. Moreover, as previously discussed, the settlements were entered into in violation of the aforementioned 2010 and 2011 injunctions. For these reasons, the settlements are voidable and, given the expressed intention of plaintiff (the beneficiary of Orly Trust) to void them, the purported releases they contain are not enforceable.

Genger v. Genger 120 A.D.3d 1102, 1104 (1st Dept. 2014).

This Court also recognized Dalia's conflicts of interest and collusion with Sagi against Orly make her unfit to act for Orly's benefit:

Additionally, Dalia, trustee of the Orly Trust, has often sided with her son Sagi in these actions, and if Orly is deemed to be an inadequate representative of the Orly Trust, and Dalia declines to pursue the Orly Trust claims against TPR/Sagi, TPR/Sagi could be insulated from the prosecution of such claims. However, after TPR/Sagi filed this motion, the Appellate Division, First Department, held that Dalia had a conflict of interest in releasing

herself, as part of settlement agreements entered into in 2011 and 2012 between TPR/Sagi and herself, as trustee. It also adjudicated the settlements, which were against Orly's interests, as void and/or voidable. (*Genger v Genger*, 115 AD3d 421, 423 [1st Dept 2014]).¹ Thus, Dalia may no longer be able to serve as trustee, having failed to disclose the conflict to her principal, Orly. And, as noted by the First Department, Orly has petitioned the Surrogate's Court to remove Dalia as trustee and to surcharge her. (*Id.*).

7/3/14 Decision and Order at 3-4 (emphasis added) [Index No. 109749/09; Docket No. 698].

Dalia Genger, trustee of the Orly Trust, neither filed nor joined in the instant motion. Instead, she signed an affidavit, dated June 28, 2013, asserting that "an analysis of the claims [filed by Orly against the Trump Group] shows that they are entirely claims of the Orly Trust and that she has no individual rights separate therefrom." (NYSCEF 483, ¶ 2). Dalia's assertion is not supported or accompanied by any analysis of the subject claims, and is fatally conclusory....And having found that "Dalia – as trustee of Orly's Trust – had a conflict of interest in releasing herself as part of the October 2011 and March 2012 settlement agreements [embodying the proposed transactions]" (*Genger v Genger*, --AD3d--, 2014 NY Slip Op 01421 *2 (1st Dept 2014), the Appellate Division throws doubt on Dalia's standing to complain.

3/20/14 Decision and Order at 3-4 (emphasis added) [Docket No. 925].

This Court, the Delaware Chancery Court, and the District Court for the Southern District of New York have all questioned Dalia's fitness to serve as a fiduciary for Orly, and questioned her motivation for refusing to resign as Trustee.

THE COURT: [referring to Surrogate Roth's January 2009 decision] The Surrogate said, you know, basically she should be given a chance to try out, in essence. That's when I reread Judge Roth's decision that at the time of the original objection to her, or the challenge to her, she hasn't been given a chance to serve.

¹ In response to Dalia and Sagi/TPR's motions for reconsideration, the First Department replaced the referenced decision with a September 2014 decision, which re-affirmed Dalia's conflict of interest and expanded upon its prior ruling.

I just don't understand why somebody would want to continue to serve as the trustee of her daughter's trust when the daughter doesn't want her. Why not just say: Okay. I'm out of this. You want to have a fight with your brother, have a fight with your brother. If you want to have a fight with your father, have a fight with your father.

I mean, unless there is some truth to the conspiracy theories asserted by the plaintiffs, why is she continuing to serve? Why doesn't she resign? Who needs this aggravation?

8/15/12 Hearing Tr. 3:23-4:13 (Feinman, J.) (emphasis added) [Index No. 109749/09; Docket No. 318].

THE COURT: Well how can she be both? She is the trustee for the Orly Trust. Right?...And as I read Chancellor Strine's – he's chief justice down there, chief judge. As I read his remarks, he kept suggesting that she no longer should be trustee, didn't he?

4/29/14 Hearing Tr. at 27-28 (Keenan, J.) (Janovsky Aff., **Exhibit I**) see also 8/1/13 Hearing Tr. at 42-43 (Janovsky Aff., **Exhibit J**) (Chancellor Strine questioning Dalia's fitness to serve as trustee, where "Dalia brings a lawsuit that Orly doesn't want," where "Dalia's aligned with Sagi" and Dalia is willing to come to a since voided settlement "on terms that Orly gives up any claim that she has that Sagi didn't exactly cut the pie fairly").

Even after the Surrogate's Court directed the parties to find an alternate trustee, Dalia refused to step down as Trustee for the Orly Trust. See 3.12.13 Orly Letter to Court [Index No. 109749/09; Docket No. 406]. In this regard, Orly and Sagi identified a distinguished attorney – Alex Sussman – acceptable to both Orly and Sagi. Dalia, however, refused to step down unless and until she was released from all liability for her actions as Trustee (once again placing herself and her interests ahead of Orly and the Orly Trust). See June 2013

Correspondence re: Alex Sussman (Janovsky Aff., **Exhibit A**).

C. **The June 2013 Confidential Settlement Agreement Between The “AG Group” And The “Trump Group”**

On June 16, 2013, plaintiffs Arie and Orly (individually and as beneficiary of the Orly Trust) and the Trump Group defendants entered into a confidential settlement agreement, resolving the settling parties’ respective claims and counterclaims against one another (the “Confidential Settlement Agreement” or “CSA”).² As this Court has found, based on its prior *in camera* review of the CSA, “in the settlement agreement, Orly stops short of releasing derivative claims.” 3/20/14 Decision and Order at 4.

The Court’s ruling on the matter is correct. The CSA is executed by the “AG Group” and the “Trump Group.” Confidential Settlement Agreement at 1. The AG Group includes “Orly Genger (in her individual capacity and in her capacity as beneficiary of the Orly Genger 1993 Trust).” *Id.* The Orly Trust is expressly excluded from the AG Group, and is, instead, defined as a member of the non-settling “Sagi Group.” *Id.* at 3. No provision in the CSA provides for settlement of Orly Trust claims.

Dalia contends (Dalia Br. at 8) that Orly’s agreement in the CSA to “cooperate” in any future Trump Group efforts to “cause” the Orly Trust to release its claims against them, should she be asked to do so by them (CSA, ¶ 8), is equivalent to Orly settling Orly Trust claims on behalf of the Orly Trust. “Cooperating” is not a synonym for “settling” or “releasing.” More fundamentally, Dalia entirely misses the point of the “cooperation provision” – this provision further proves the CSA did not settle any Orly Trust claims. If the CSA had settled Orly Trust

² The Confidential Settlement Agreement has been filed under seal as **Exhibit K** to the Affirmation of Peter

claims against the Trump Group, Orly's "cooperation" would be entirely unnecessary, because there would be nothing to "cause" in the future. Only if the CSA did not settle and release Orly Trust claims would there be a need for Orly to "cooperate" in future Trump Group efforts to "cause" the Orly Trust claims against them to be dismissed.

Dalia's recitation of positions taken at one time by Trump Group counsel, Thomas Allingham, regarding the CSA (see Dalia Br. at 2, 7-8) is unavailing, because it contradicts the CSA's "Entire Agreement" provision. See CSA, ¶ 17. That provision makes anything written about the CSA entirely irrelevant, unless it is an instrument in writing signed by all Parties. Id. Accordingly, the language of the CSA controls. Id. In turn, the CSA's plain and unambiguous language demonstrates that the Orly Trust is not a settling party, and Orly did not settle Orly Trust claims.

D. The Second Amended Stipulation Of Discontinuance In This Action

On July 1, 2013, the Court signed the Second Amended Stipulation of Discontinuance. See Second Amended Stipulation of Discontinuance at 2 [Docket No. 487] ("All claims, counterclaims and third-party claims of the AG Group in this action against the Trump Group are discontinued with prejudice and without costs."). Like the CSA before it, the Second Amended Stipulation of Discontinuance carefully and expressly limited the claims discontinued by Orly to those brought by Orly "individually and as beneficiary of the Orly Trust." See generally id. It did not discontinue any Orly Trust claims. Id. Because the Orly Trust claims still existed and were not discontinued, the Second Amended Stipulation of Discontinuance also released Dalia to prosecute her previously stayed Dalia Delaware Action

Janovsky ("Janovsky Aff."), filed contemporaneously herewith.

(defined and discussed below). See id. The Dalia Delaware Action had been previously restrained by the Court as duplicative and irreparably harmful to Orly and the Orly Trust. See 10.26.11 Order To Show Cause; 11.9.11 Order To Show Cause; 4.10.12 Interim Decision [Docket Nos. 150, 165, 230].

E. No Claims Remain Against The Trump Group In This Action

On July 24, 2014, plaintiffs' remaining claims were dismissed on appeal to the Appellate Division, First Department.³ As a result of the First Department's July 24, 2014 Order, plaintiffs, including the Orly Trust, have no claims in this action. As shown below, the remaining claims were dismissed because of a so-called settlement of the Dalia Delaware Action, deliberately drafted and designed by Dalia and TPR/Sagi to end the Orly Trust claims against TPR/Sagi, and ensure that over \$10 million from TPR/Sagi's sale of the Orly Trust TRI Shares went to TPR/Sagi, not the Orly Trust.

On November 25, 2014, the Court entered an Order, agreed to by the remaining parties to the action, dismissing plaintiffs' operative complaint (without prejudice to plaintiffs' right to seek leave to appeal to the Court of Appeals) and severing plaintiffs' dismissed complaint from Sagi/TPR's counterclaims, cross-claims and third-party claims. See 11.25.14 Order [Docket No. 1153]. (Dalia has appealed the Court's November 25, 2014 Order, but has not yet perfected her appeal.)

On January 31, 2014, the Trump Group defendants made a motion on notice to all parties to dismiss the remaining claims against them in this action. These claims were brought

³ Plaintiffs have sought leave to appeal the First Department's decision to the Court of Appeals. Plaintiffs' motion to the Court of Appeals is *sub judice*.

by Sagi and TPR. [Docket Nos. 732-751.] By Notice dated August 23, 2014, Sagi and TPR voluntarily discontinued claims against the Trump Group members, but not TRI. [Docket No. 1112]. By Decision and Order dated January 7, 2015, the Court dismissed all claims by Sagi and TPR against the Trump Group and TRI. See 1.7.15 Decision and Order at 21-22 [Docket No. 1159]. At present, there are no existing claims, counterclaims, or cross-claims against the Trump Group in this action.

F. The Dalia Delaware Action Against The Trump Group And August 2013 Delaware Stipulation Dismissing Dalia's Claims Against The Trump Group With Prejudice

On October 4, 2011 – one day after signing a “defendant-only settlement agreement” that violated two court orders – Dalia commenced a derivative action on behalf of the Orly Trust in Delaware Chancery Court (the “Dalia Delaware Action”). By the Dalia Delaware Action, Dalia sought a Declaratory Judgment that the Orly Trust (and not TPR or the Trump Group entities) was the beneficial owner of the Orly Trust TRI Shares. See Dalia Delaware Complaint ¶¶ 37-43 (Janovsky Aff., **Exhibit C**). By commencing her action in Delaware, Dalia provided the Delaware Chancery Court with the personal jurisdiction over the Orly Trust that the Chancery Court previously lacked. Id.

This lawsuit by Dalia was a transparent attempt to give the Delaware Court the jurisdiction to apply previous adverse decisions to the Orly Trust, and find that the proceeds of the sale of the Orly Trust TRI Shares belonged to TPR/Sagi, and not the Trust. As beneficial ownership of the Orly Trust TRI Shares and disposition of the proceeds from the sale were at issue in this New York action, Orly obtained two temporary restraining orders in New York state court on October 26, 2011 and November 9, 2011 (later continued by an April 10, 2012 Interim Decision) preventing Dalia, TPR and the Trump Group from prosecuting the Dalia Delaware

Action. See 10.26.11 Order To Show Cause; 11.9.11 Order To Show Cause; 4.10.12 Interim Decision [Docket Nos. 150, 165, 230.] These restraints were lifted as part of Orly's individual settlement with the Trump Group. See Second Amended Stipulation of Discontinuance at 2 [Docket No. 487].

When the restraints were lifted, Dalia (as Trustee of the Orly Trust), TPR (controlled by Sagi), and the Trump Group, drafted and entered into an August 13 Stipulation that was "So Ordered" by the Delaware Chancery Court (the "Delaware Stipulation"). In the Delaware Stipulation, Dalia stipulated and agreed, on behalf of the Orly Trust, to (i) the validity of the TPR sale of the Orly Trust TRI Shares to the Trump Group, (ii) the Trump Group's ownership "(beneficially, of record, and otherwise)" of the Orly Trust TRI Shares, and (iii) dismiss with prejudice the Orly Trust's claims to beneficial ownership of the Orly Trust TRI Shares. Thus, Dalia included in the Delaware Stipulation that:

In the action styled *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (the "3994 Action"), the Court found that (i) the transfers in October 2004 of Trans-Resources, Inc. ("Trans-Resources") stock out of TPR were in violation of the March 2001 Stockholders Agreement among Trans-Resources, TPR, TR Investors, LLC and Glenclova Investment Co.; (ii) the transfers were void and the stock reverted to TPR, and (iii) the Trump Group had the right to buy all of the improperly transferred Trans-Resources stock from TPR. These determinations and findings were essential to the Court's determinations and findings in the 3994 Action.

Delaware Stipulation at ¶ 2 (Janovsky Aff., **Exhibit D**).

Dalia also included in the Delaware Stipulation that:

The Trump Group, having closed on the purchase of the so-called Orly Trust Shares (representing 1102.8 shares of Trans-Resources stock) pursuant to and under the terms of the Side Letter

Agreement between TPR and the Trump Group entered into in August 2008, as was the Trump Group's right under that agreement, owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to the shares if Trans-Resources purportedly transferred by TPR to the Orly Genger 1993 Trust. As a result, the Trump Group owns, for all purposes, all right, title and interest (beneficially, of record and otherwise) to all authorized and issued shares of Trans-Resources.

Id. at 1-2.

Finally, Dalia included in the Delaware Stipulation that:

The claims brought on behalf of the Orly Genger 1993 Trust by the Trustee of the Orly Trust against the Trump Group are dismissed with prejudice...

Delaware Stipulation at ¶ 4. This means that Dalia purported to accept the void nature of the transfer of the Orly Trust TRI Shares to the Orly Trust, the validity of the sale of those shares between TPR/Sagi and the Trump Group, and to dismiss with prejudice all Orly Trust claims against the Trump Group related to the beneficial ownership of the Orly Trust TRI Shares. See id.

Dalia now strategically contends that Orly, via the CSA, caused her to enter into the Delaware Stipulation. Dalia Br. at 2, 8. If the CSA was the supposed guiding force of the Delaware Stipulation, as Dalia now claims, one would naturally expect it to be described, or discussed somewhere in the Delaware Stipulation, but it is not even mentioned or referenced. See Delaware Stipulation (Janovsky Aff., Ex. D).

Moreover, Dalia entered into the Delaware Stipulation against Orly's express direction. Specifically, prior to its execution, Dalia's counsel, Robert Meister, wrote an August 9, 2013 letter to the Chancery Court representing that Dalia would not sign the Delaware

Stipulation unless Orly consented to its execution. See 8/9/13 Meister Letter (Janovsky Aff., **Exhibit E**). Then on August 13, 2013, Dalia's counsel provided Orly's counsel with a draft of the Delaware Stipulation, and stated that Dalia was considering signing the stipulation on behalf of the Orly Trust. See 8/13/13 Meister Letter With draft stipulation (Janovsky Aff., **Exhibit F**).

By August 16, 2013 letter, Orly's counsel responded stating that the stipulation in its current form was unacceptable to Orly, and sought Dalia's representation that she would not sign the Delaware Stipulation without Orly's consent, as Dalia represented to the Delaware Chancery Court. See 8/16/13 Orly Letter (Janovsky Aff., **Exhibit G**). Orly also submitted her proposed changes to the Delaware Stipulation to the Delaware Chancery Court and to Dalia, who had represented she would not sign it on behalf of the Orly Trust without Orly's consent. See 8.26.13 Wachtel Letter (Janovsky Aff., **Exhibit H**). Despite Dalia's representations to the Court and her fiduciary duties to Orly as Trustee of the Orly Trust, Dalia ignored Orly's wishes and signed the Delaware Stipulation without Orly's proposed changes, without Orly's consent, and against Orly's instructions.

Dalia not only omits this direct evidence showing she once again ignored Orly, but Dalia's only supposed evidence that she entered into the Delaware Stipulation at Orly's direction is Dalia's repeated and deliberate misrepresentation of a letter sent to the Delaware Chancery Court by Orly counsel, William Wachtel. See Dalia Br. at 2, 8 (citing and misquoting August 13, 2013 Wachtel Letter, attached as Ex. 5 to Dalia Motion).⁴

The Wachtel Letter did not direct the Orly Trust to do anything. Rather, Mr. Wachtel wrote the letter to the Delaware Court to respond to Dalia's deliberate disregard of the

⁴ For the Court's convenience, the 8.12.13 Wachtel Letter is also attached as **Exhibit B** to the Janovsky Aff.

Delaware Court's directive that Dalia inform the Court "whether Dalia is willing to step out of the Trust." Wachtel Letter at 1 (citing Delaware Court). Mr. Wachtel then discussed some instances of Dalia's bias and conflicts of interest that renders her an unsuitable Trustee. Id. at 2-3. Mr. Wachtel summarized by noting that "[w]ere she [Dalia] to resign, it would instantaneously facilitate the dismissal of the last remaining Genger related case in Delaware." Id. at 1. This letter cannot possibly be read as an instruction by Orly directing the Orly Trust to do anything (except perhaps have Dalia resign as Trustee, which Dalia refuses to do). Dalia misrepresents the Wachtel letter by twice omitting the underlined portion of the above sentence.

Importantly, when Mr. Wachtel referred to the CSA in the Wachtel Letter, he confirmed that the CSA did not settle any Orly Trust claims – Orly only settled individually and in her capacity as beneficiary of the Orly Trust:

We wish to confirm to your Honor that Orly has indeed settled all disputes between her and the Trump Group. As part of that settlement, Orly has acknowledged *individually and in her capacity as the beneficiary of her trust* that the Trump Group are the record and beneficial owners of the TRI shares which had been distributed to the Orly Trust. Orly has not, however, abandoned her claim to the proceeds of the sale of those shares against TPR and Sagi, nor to her other damage claims against TPR and Sagi, some of which are discussed below.

Id. at 2 (italics added; underlines in original).

G. The Delaware Stipulation Works To Harm Orly And The Orly Trust As Dalia And Sagi Intended

Two separate courts already have found the Delaware Stipulation determined beneficial ownership of the intended Orly Trust TRI Shares (and paved the way for TPR/Sagi to claim the \$10.3 million in proceeds from the sale of those shares to the Trump Group). Thus, the

District Court for the Southern District of New York (Keenan, J.) stated:

As part of a stipulation dismissing the action in Delaware Chancery Court, the parties to that action -- TPR/Sagi, the Trump Group, and Dalia, but not Arie or Orly -- agreed that the Trump Group is the rightful owner of the Orly Trust Shares.

TPR Investment Associates, Inc. v. Pedowitz & Meister, LLP, 2014 U.S. Dist. LEXIS 67116, *5-6 (May 15, 2014). Likewise, the Appellate Division, First Department held the August 2013 Delaware Stipulation – and not the CSA – determined beneficial ownership and ended Orly’s claims to the \$10.3 million in proceeds from Sagi/TPR’s sale of those shares to the Trump Group:

Moreover, under the 2008 agreement between TPR and the Trump Group, the sale could only take place after a judicial determination that TPR is the record and beneficial owner of the Orly Trust’s TRI shares. When the complaint was filed, it had only been determined that TPR was the shares’ record owner, but the Delaware Chancery Court has now also ruled that TPR is the shares’ beneficial owner (Stipulation & Proposed Order of Dismissal, *Dalia Genger v TR Invs., LLC* [Del Ch Ct, Aug. 30, 2013] [C.A. No. 6906-CS]).

Genger v. Genger, 2014 N.Y. App. Div. LEXIS 5390, *13 (1st Dept. July 24, 2014). The First Department used that finding as a lever to dismiss all of Orly’s remaining claims in this action. See id.

It was only after Dalia secured \$10.3 million for her favored son Sagi, by “stipulating” to certain facts and “dismissing with prejudice” the Orly Trust claims against the Trump Group, that she turned around and took the opposite position by this Motion. Having gone back to the Delaware Court and prosecuted her claims there until August 2013, Dalia now claims Orly had previously settled those claims two months earlier, in the June 2013 CSA. Dalia

performs this “switcheroo” not to protect the Orly Trust, but to harass Orly and continue her and Sagi’s campaign to ensure that, no matter what else happens, Orly is left with nothing.

ARGUMENT

I. DALIA’S MOTION TO SUBSTITUTE HERSELF ON THE CLAIMS IN THIS CASE AGAINST THE TRUMP GROUP SHOULD BE DENIED

A. Dalia’s Motion To Substitute Fails As Moot Because There Are No Claims Remaining Against The Trump Group For Which Dalia Could Substitute

Because of the Delaware Stipulation engineered by Dalia, all claims by Orly in the operative complaint were dismissed (without prejudice to plaintiffs’ right to seek leave to appeal to the Court of Appeals). See Statement of Facts, Sections E, G; Genger v. Genger, 2014 N.Y. App. Div. LEXIS 5390, *13 (1st Dept. July 24, 2014); 11.25.14 Order (dismissing plaintiff’s complaint and severing Sagi/TPR’s remaining claims) [Docket No. 1153]. Thus, no plaintiffs’ claims remain against the Trump Group for Dalia to substitute into, and Dalia’s motion to substitute fails as moot.⁵

B. Dalia’s Motion To Substitute Fails Because Of The Delaware Stipulation

By executing the Delaware Stipulation, Dalia purported to dismiss the Orly Trust claims against the Trump Group with prejudice. See Delaware Stipulation at ¶ 4. Dalia also sought to incorporate in the Delaware Stipulation the prior findings of fact of the Delaware Chancery Court (in a litigation that did not involve Orly or the Orly Trust as parties) that the transfer of the Orly Trust TRI Shares were void, and “the Trump Group had the right to buy all

⁵ On January 7, 2015, this Court also dismissed all Sagi and TPR claims against the Trump Group, including TRI, see 1.7.15 Decision and Order at 21-22 [Docket No. 1159], eliminating all existing claims by any party against the Trump Group.

of the improperly transferred Trans-Resource stock from TPR.” Delaware Stipulation at ¶ 1.
This all took place after the June 2013 CSA.

Having acted in Delaware on the implicit basis that the Orly Trust claims were not settled by the CSA, Dalia cannot now properly turn around and assert the CSA settled those Orly Trust claims. See ICN Pharmaceuticals, Inc. v. Bristol-Myers Co., 245 A.D.2d 182, 186 (1st Dept. 1997) (holding that defendant was bound by the doctrine of judicial estoppel from taking a position before the New York County Supreme Court that was inconsistent with a position taken in a prior arbitration); General Electric Co. v. Inter-America Marketing Systems, Inc., 220 A.D.2d 307 (1st Dept. 1995) (“The IAS Court properly invoked the doctrine of judicial estoppel to preclude those counterclaims...since defendant successfully advanced the diametrically opposite position at the trial of plaintiff’s claims.”).

If Dalia believes in good faith that the Orly Trust has remaining claims against the Trump Group, they cannot be advanced by her. ICN Pharmaceuticals, supra; General Electric Co., supra. Accordingly, she should resign and let any such claims be advanced (or not) by a new trustee.

C. Dalia’s Motion To Substitute Fails Because Dalia Suffers From Conflicts Of Interest, Is Biased In Favor Of Sagi And Against Orly, And Is Otherwise Unfit To Conduct This Litigation On Behalf Of The Orly Trust

Multiple courts have properly found that Dalia suffers from conflicts of interest, has aligned herself with Sagi against Orly, and/or questioned why she does not simply resign if she truly cared more about Orly and the Orly Trust than about herself. See Statement of Facts, Section B. Dalia already has amply demonstrated that she cannot be trusted to serve as Orly’s fiduciary, or trusted to avoid using her position as Trustee to further harm Orly and the Orly

Trust. Id.

Ironically, James v. Bernhard, 106 A.D.3d 435, 965 N.Y.S.2d 56 (1st Dept. 2013) – the only case cited by Dalia in her brief (Dalia Br. at 4) – demonstrates precisely why Dalia should not be substituted as the plaintiff in this case. In that case Bernhard was removed as derivative action plaintiff under CPLR 1021 because “defendants have established a ‘persuasive case’ that ‘the proper protection of the corporation’s interest or the proper conduct of the litigation would be better served by the elimination or change in the identity’ of the plaintiff due to a conflict of interest.” 106 A.D.2d at 435 (citations omitted). To protect the corporation and ensure the litigation was conducted in good faith, a special litigation committee free from conflict was substituted for the conflicted plaintiff. Id. Here, Dalia seeks the exact opposite – to introduce her conflicts of interest into this litigation and place Orly and the Orly Trust at risk. CPLR 1021 does not exist for that reason, and Dalia’s motion to substitute should be denied.

If Dalia truly wishes for the Orly Trust to “pick up the cudgel” against the Trump Group (Dalia Br. at 5), the proper course is for her to resign, and let Alex Sussman (or some other trustee that is conflict-free and acceptable to Orly) advance those claims, if it is appropriate for the Orly Trust to do so.

II. DALIA’S MOTION TO HAVE THE CONFIDENTIAL SETTLEMENT AGREEMENT PROCEEDS PAID INTO COURT UNDER CPLR 2701 SHOULD BE DENIED

Dalia claims the Orly Trust is entitled to proceeds from Orly’s individual settlement with the Trump Group because the CSA settled Orly Trust claims. Dalia is wrong. See 3/20/14 Decision and Order at 4 [Docket No. 925] (“In the settlement agreement, Orly stops short of releasing derivative claims.”). That the CSA does not settle Orly Trust claims is

confirmed by, among other things, (i) the plain language of the CSA; (ii) the plain language of the Second Amended Stipulation of Settlement; and (iii) Dalia taking prior advantage of the fact that neither the CSA nor the Second Amended Stipulation of Settlement settled Orly Trust claims to continue her Dalia Delaware Action and enter into the Delaware Stipulation. See Statement of Facts, Sections C, D, F, G.

Moreover, on its face, CPLR 2701 does not support Dalia's efforts to have the CSA proceeds from the CSA paid into Court. CPLR § 2701 provides:

When court may order disposition of property. The court upon motion or on its own initiative with such notice as it deems proper, may order personal property capable of delivery which is the subject of the action, paid into court or delivered to such person as it may direct with such security as the court shall direct, and subject to its further direction if:

1. a party has such property in his possession, custody or control as trustee for another party or where it belongs or is due to another party; or
2. a party has such property in his possession, custody and it belongs or is due to another party where special circumstances make it desirable that payment or delivery to such other party should be withheld; or
3. the ownership of such property will depend on the outcome of a pending action and no party is willing to accept possession or custody of it during the pendency of the action.

CPLR § 2701 (emphasis added).

CPLR 2701 is narrow. It only permits property “which is the subject of the action” to be paid into Court. Id. The CSA proceeds are not the subject of this action, or any other action. Accordingly, CPLR 2701 simply does not apply. For this reason alone, Dalia's “funds motion” should be denied. Remarkably, Dalia omits the phrase “the subject of the

action” when citing CPLR 2701 on page 5 of her brief, to avoid informing the Court that there is an express “subject of the action” requirement in the statute that is fatal to her motion.

Not only must the property at issue be “the subject of the action,” but a party must also fit within one of the three subdivisions of CPLR 2701. Dalia’s motion does not. For example, each subdivision speaks in terms of “a party.” The Orly Trust, however, is no longer a party to this action. All of plaintiffs’ claims have been dismissed, and Sagi and TPR have bought no claims against the Orly Trust. See Statement of Facts, Section E.

Further, Orly is not holding any CSA proceeds “as trustee for another party” nor do any of those funds “belong or is due” to Dalia or the Orly Trust (CPLR 2701(1)); Dalia does not identify any “special circumstances” making it desirable that the CSA proceeds be paid into Court (CPLR 2701(2)); and there is no question that the “ownership of the settlement funds” will not “depend on the outcome of a pending action” (CPLR 2701(3)), particularly since the action into which Dalia appears to want to insert herself no longer exists.

For each of these reasons, CPLR§ 2701 is inapplicable, and cannot serve as a legal basis for the exceptional relief Dalia seeks – to force the AG Group to pay the CSA proceeds into Court.

The four CPLR 2701 cases cited by Dalia (Dalia Br. at 6) show Section 2701 is meant for those limited instances where (i) there is a monthly stream of ongoing payments, (ii) there is no question that those payments belong to either plaintiff or defendant, and (iii) those payments are the “subject of the action.” Thus, in Rice v. DiNapoli, 2009 NY Misc. LEXIS 1182 (N.Y. Sup. Ct. Apr. 21, 2009), Lade v. Levitt, 33 A.D.2d 956 (3d Dept. 1970), and Werner v. Werner, 1972 N.Y. Misc. LEXIS 1743 (N.Y. Sup. Ct. July 6, 1972), the State Comptroller

paid monthly death benefits into Court until suits between widows and ex-spouses regarding who owned those death benefits could be decided. Similarly, in Conforti v. Goradia, 234 A.D.2d 237 (1st Dept. 1996), rent was paid into Court until resolution of a lawsuit between landlord and tenant involving that rent.⁶

Here, there is no monthly payment stream, neither Dalia nor the Orly Trust has any real right to any CSA proceeds, and there is no action pending where Dalia or the Orly Trust claims ownership of the CSA proceeds. There is only a moot motion improperly brought in an action that concerned other matters.

CONCLUSION

For each of the foregoing reasons, Orly respectfully requests the entry of an Order (i) denying Dalia's CPLR 1021 motion to substitute herself as derivative plaintiff regarding Orly Trust claims against the Trump Group in this action; (ii) denying Dalia's CPLR 2701 motion to have the Confidential Settlement Agreement proceeds paid into Court; and (iii) granting Orly such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 13, 2015

ZEICHNER ELLMAN & KRAUSE LLP

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Peter Janovsky
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⁶ The other two cases cited by Dalia at p. 6 of her brief – Gusinsky v. Bailey, 2008 Misc. LEXIS 5811 (N.Y. Sup. Ct. Sept. 17, 2008) and Clarke v. Greenberg, 296 N.Y. 146 (1947) – do not even concern or address CPLR 2701. Gusinsky concerns the requirement that a derivative settlement be approved by the Court. Here, the Confidential Settlement Agreement did not require court approval because it did not settle derivative claims. The court in Clarke held proceeds from settlement of a pure shareholder derivative lawsuit belonged to the company. In that case, however, plaintiff brought no individual claims on his own behalf, and only settled derivative claims.

DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: March 17, 2015

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X
SAGI GINGER,	: 14-cv-5683 (KBF)
	: :
Plaintiff,	: :
	: ECF Case
-against-	: :
	: [PROPOSED]
ORLY GINGER,	: <u>AMENDED JUDGMENT</u>
	: :
Defendants.	: :
-----	X

WHEREAS the above-captioned action having come before this Court, and the matter HAVING COME BEFORE THE Honorable Katherine B. Forrest, United States District Judge, the Court, on January 5, 2015, having rendered its Opinion and Order granting Sagi Genger's ("Sagi") motion for summary judgment, denying Orly Genger's ("Orly") motion for summary judgment, denying as moot Orly's motion to disqualify and all pending motions in limine, and directing the Clerk of Court to terminate this action, and the Court on March 9, 2015 having rendered its Opinion and Order awarding Sagi \$150,059.01 in attorneys' fees, it is

ORDERED, ADJUDGED AND DECREED:

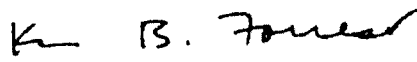
1. That for the reasons stated in the Court's Opinion and Order dated January 5, 2015, Opinion and Order dated January 23, 2015 and addition submissions to the Orders and Judgments Clerk hereto, Sagi's motion for summary judgment is granted; Orly's motion for summary judgment is denied; all other pending motions are denied as moot;

2. That for the reasons stated in the Court's Opinion and Order dated March 9, 2015, Sagi is entitled to \$150,059.01 in attorneys' fees and costs;

3. Sagi is hereby awarded \$100,000 in base damages, plus statutory interest in the amount of \$7,989 pursuant to CPLR Article 50 at 9% per annum from February 17, 2014 through entry of the Amended Judgment, and \$150,059.01 in attorneys' fees and costs, for a total judgment of \$258,048.01.

Dated: New York, New York
March 17, 2015

SO ORDERED.

 03/17/2015

KATHERINE B. FORREST
United States District Judge

STATE OF NEW YORK,
COUNTY OF NEW YORK.

AFFIDAVIT OF SERVICE
BY UPS GROUND COMMERCIAL DELIVERY

JOHN D. DELANEY, being duly sworn, says: that I am over the age of eighteen years, and am not a party herein, and reside in Jersey City, New Jersey and that on the 6th day of October, 2015, I served a true copy of the within:

**ONLY GENDER'S RESPONSE TO DALIA'S UNAUTHORIZED
SUPPLEMENTAL FILING ON HER ALREADY FULLY
SUBMITTED MOTION TO DISMISS**

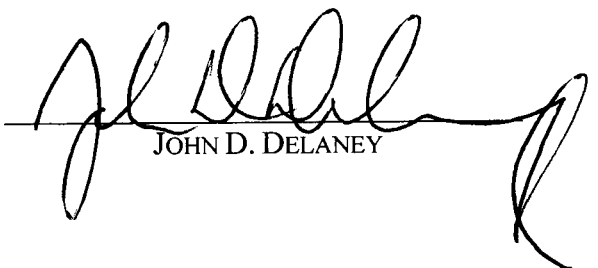
**AFFIRMATION OF BRYAN D. LEINBACH
with Exhibits;**

by delivering into the exclusive care and custody of a representative of United Parcel Service for ground commercial delivery a true copy of the papers to the attorneys hereinafter named at the places hereinafter stated, which was properly enclosed in a pre-paid addressed wrapper of United Parcel Service and left in the custody of a representative of UPS to be sent by ground commercial delivery, directed to said attorneys at their last known addresses given below:

Steven Riker, Esq.
Guardian Ad Litem
LAW OFFICE OF STEVEN RIKER
110 East 59th Street, 23rd Floor
New York, New York 10022

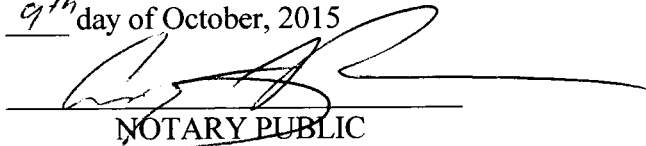
John G. Dellaportas, Esq.
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, New York 10178

Robert Meister, Esq.
PEDOWITZ & MEISTER, LLP
570 Lexington Avenue, 18th Floor
New York, New York 10022



JOHN D. DELANEY

Sworn to before me this
9th day of October, 2015



NOTARY PUBLIC

ANTHONY ROSARIO
Notary Public, State of New York
No. 01RO6212071
Qualified in Bronx County
Commission Expires 10/05/2017

**SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

File No.: 0017/2008

**In the Matter of the Application of Orly
Genger to Remove Dalia Genger as
Trustee of the Orly Genger 1993 Trust
Established on December 13, 1993, by**

ARIE GENDER,

Grantor,

AFFIRMATION OF BRYAN D. LEINBACH

ZEICHNER ELLMAN & KRAUSE LLP

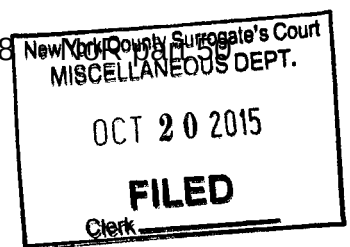
1211 AVENUE OF THE AMERICAS

NEW YORK, NEW YORK 10036

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

File No. 0017/2008

In the Matter of the Application of ORLY GENGER,
as a person interested, for the removal of DALIA
GENGER, as Trustee of the Orly Genger 1993 Trust
pursuant to SCPA §711(11)

**AFFIRMATION OF
STEVEN RIKER, ESQ.
IN OPPOSITION TO
THE SAGI TRUST'S
MOTION TO DISMISS**

-----X

STEVEN RIKER, an attorney duly admitted to practice law before the Courts of the State
of New York, hereby affirms the following to be true subject to the penalties of perjury:

1. I was appointed by an Order of the Hon. Nora S. Anderson to serve as the
Guardian ad Litem of unborn children of Petitioner Orly Genger ("Orly") in this miscellaneous
proceeding.
2. I submit this affirmation in opposition to the instant motion of the Sagi Genger
1993 Trust (the "Sagi Trust"), which seeks to dismiss Orly's Third Amended Verified Petition,
dated October 15, 2012 (the "TAP").

BACKGROUND

3. Orly is the primary beneficiary of an irrevocable inter vivos trust established by
her father, Arie Genger ("Arie"), on or about December 13, 1993 (the "Orly Trust"). Orly seeks
the removal of her mother, Dalia Genger ("Dalia"), as trustee of said Trust.
4. The Orly Trust provides for discretionary principal distributions to Orly for life,
with the remainder to her descendants (i.e., my wards), or if she has no descendants, to a trust
Arie established for the benefit of Orly's brother, Sagi Genger (the "Sagi Trust").
5. The Sagi Trust now seeks to dismiss the TAP on three grounds, namely that: 1)
the TAP fails to state a valid claim for the removal of Dalia, as trustee; 2) the TAP is based upon

Orly's allegedly false statement concerning her lack of a relationship with the proposed successor trustee; and 3) Orly is allegedly exploiting this proceeding to delay the determination of Dalia's application for the return of \$32.2 million to the Orly Trust that Orly received in settlement of an action in Supreme Court, New York County.

DISCUSSION

A. Allegations in TAP

6. Pursuant to the TAP (and the opposition papers submitted by Orly on this motion), Dalia has purportedly colluded with her son – Sagi – to loot the Orly Trust of its interests in two closely-held Genger family businesses – TPR Investment Associates, Inc. (“TPR”) and Trans-Resources, Inc. (“TRI”).

7. Dalia has purportedly engaged in such action as a form of retribution to her daughter, Orly, who took the side of her father, Arie, during his divorce from Dalia (while Sagi took the side of his mother, Dalia). As such, it is alleged that Dalia, in concert with Sagi, has breached her fiduciary duties as trustee of the Orly Trust.

8. By way of example and not limitation, it is alleged that Dalia failed to inform, and affirmatively concealed from, Orly, an alleged “sham” foreclosure sale by Sagi of the Orly Trust's stock interests in TPR. It is also alleged that Dalia attempted to dissipate the Orly Trust's TRI Shares by commencing a wasteful action that seeks declaratory relief with respect to the beneficial ownership of the Orly Trust's TRI Shares in the Delaware Chancery Court, notwithstanding that said court already ruled against the Orly Trust in holding that TPR is the beneficial owner of the Orly Trust's TRI Shares.

9. Additionally, it is alleged that Dalia entered into certain Secret Agreements (as

defined in the TAP) on behalf of the Orly Trust, without notice to Orly, and as such, has subjected the trust's assets to being foreclosed.

B. **The Liberal Construction to Be Afforded a Petition on a CPLR 3211 Motion**

10. It is axiomatic that on a motion to dismiss pursuant to CPLR 3211, the Surrogate must afford the petition a liberal construction and “determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 (1994)). “Whether a [petitioner] can ultimately establish [his or her] allegations is not part of the calculus” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19) (2005); *see also Lawrence v Graubard Miller*, 11 NY3d 588, 591 (2008)(holding that “[o]n a motion to dismiss a petition we, of course, must accept the facts alleged in the petition as true, petitioner must be afforded every possible favorable inference, and we must determine whether the facts alleged by petitioner fit within any cognizable legal theory”)).

11. Affidavits submitted by a respondent will almost never warrant dismissal under CPLR 3211 unless they “establish conclusively that [petitioner] has no [claim or] cause of action” (*Lawrence v Graubard Miller*, 11 NY3d 588, 591 (2008)(*quoting Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 (1976))).

C. **The Sagi Trust Has Not Met its Burden of Proof on this Motion**

12. In light of this standard, it is respectfully submitted that The Sagi Trust has not met its burden of proof on this motion. The facts, as alleged by Orly, if true, would support a claim of, inter alia, breach of fiduciary duty. Additionally, it is respectfully submitted that the other grounds stated for dismissal of the TAP – based upon Orly's allegedly false statement concerning her lack of a relationship with the proposed successor trustee and her alleged

exploitation of this proceeding – do not bear on whether a claim has been stated in the TAP.

13. Indeed, given that the Court, on this motion, must accept the facts as alleged in the TAP as true, and that Orly must be afforded every possible favorable inference, the potential credibility issues raised on this motion do not provide a basis, at this juncture, for the dismissal of the TAP.

14. What's more, the support offered on the motion to dismiss by The Sagi Trust, which includes an attorney's affirmation and trial testimony, are of minimal, if any, probative value.

15. Indeed, it is well settled that an attorney's affidavit or affirmation that is not based upon personal knowledge of the facts has no probative value and should be disregarded (*Israelson v. Rubin*, 20 A.D.2d 668 (2nd Dep't 1964)).

16. Furthermore, while the Sagi Trust does not specify the provision(s) of CPLR 3211 upon which its motion to dismiss is based, to the extent that it seeks to rely upon the transcript of trial testimony as documentary evidence, it should be noted that neither trial nor deposition testimony are considered documentary evidence within the intendment of CPLR §3211(a)(1) (*Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 271 (1st Dep't 2004)).

17. Thus, it is respectfully submitted that the Sagi Trust has not proffered proper or sufficient evidence to "establish conclusively that [petitioner] has no [claim or] cause of action" (*Lawrence v Graubard Miller*, 11 NY3d 588, 591 (2008)(quoting *Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 (1976)).